TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 690

MINERSVILLE SCHOOL DISTRICT, BOARD OF EDUCATION OF MINERSVILLE SCHOOL DISTRICT, ET AL., PETITIONERS,

vs.

WALTER GOBITIS, INDIVIDUALLY, AND LILLIAN GOBITIS AND WILLIAM GOBITIS, MINORS, BY WALTER GOBITIS, THEIR NEXT FRIEND

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 1, 1940.

CERTIORARI GRANTED MARCH 4, 1940.

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IN THE

District Court of the United States,

FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

No. 9727. March Term, 1937.

WALTER GOBITIS, Individually, and LILLIAN GOBITIS and WILLIAM GOBITIS, Minors, by WALTER GOBITIS, Their Next Friend,	H. M. McCaughey, Esq.
v.	
MINERSVILLE SCHOOL DISTRICT, BOARD OF EDUCATION OF MINERSVILLE SCHOOL DISTRICT, Consisting of DAVID I. JONES, DR. E. A. VALIBUS, CLAUDE L. PRICE, DR. T. J. MCGURL, THOMAS B. EVANS, and WILLIAM ZAPF, and CHARLES E. ROUDABUSH, Superintendent of MINERSVILLE PUBLIC SCHOOLS.	John C. McGurl, Esq., Rawle & Henderson, Esqs.

DOCKET ENTRIES.

May 3, 1937.	Bill of Complaint, filed.
May 3, 1937.	Subpœna exit—returnable May 24, 1937.
May 12, 1937.	Subpœna returned: "on May 7, 1937, served" and filed.
May 18, 1937.	Appearance of John C. McGurl, Esq., and Rawle & Henderson, Esqs., for defendants filed.
May 27, 1937.	Motion to dismiss bill of complaint filed.
Sept. 11, 1937.	Præcipe to place case on Argument List filed.
Oct. 18, 1937.	Argued sur motion to dismiss bill.

Dec. 1, 1937.	Opinion, Maris, J., denying motion to dismiss bill of complaint filed.
Dec. 30, 1937.	Answer of defendant filed.
Jan. 6, 1938.	Printed copy of Answer filed.
Feb. 15, 1938.	Trial—witnesses sworn.
Mar. 2, 1938.	Testimony filed.
Apr. 5, 1938.	Suggestion of death of Geo. H. Beatty, filed.
Apr. 5, 1938.	Defendant's requests for findings of fact and conclusions of law filed.
June 18, 1938.	Opinion, Maris, J., granting decree for plaintiffs filed.
June 18, 1938.	Plaintiff's requests for findings of fact and conclusions of law and rulings of the Court thereon filed.
June 18, 1938.	Rulings of the Court on defendant's requests for findings filed.
July 11, 1938.	Final Decree granting perpetual injunction with costs filed.
July 11, 1938.	Writ of Perpetual Injunction exit.
Aug. 2, 1938.	Statement of Evidence, Stipulation as to Statement of evidence, and Order approving narrative statement filed.
Aug. 9, 1938.	Stipulation of Counsel that proceedings be discontinued as to George Beatty, defendant, filed.
Aug. 9, 1938.	Præcipe to mark case discontinued as to George Beatty, filed.
Aug. 9, 1938.	In accordance with præcipe filed, this case is marked discontinued as to George Beatty only; Attest: Robert T. Press, Deputy Clerk.

Aug. 9, 1938.	Petition of defendants for appeal and Order allowing Appeal filed.
Aug. 9, 1938.	Assignments of Error filed.
Aug. 10, 1938.	Copy of Notice of Appeal filed.
Aug. 10, 1938.	Bond sur appeal in $250., with Aetna Casualty & Surety Co., surety, approved and filed.
Aug. 12, 1938.	Citation returned: "service accepted" and filed.
Aug. 15, 1938.	Præcipe for transcript of record filed.

BILL IN EQUITY.

(Filed May 3, 1937.)

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

No. 9727. March Term, 1937.

IN EQUITY.

Walter Gobitis, Individually, and Lillian Gobitis and William Gobitis, Minors, by Walter Gobitis, Their Next Friend,

Complainants,

v.

Minersville School District: Board of Education of Minersville School District, Consisting of David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans and William Zapf, and Charles E. Roudabush, Superintendent of Minersville Public Schools,

Defendants.

To the Honorable Judges of the United States District Court for the Eastern District of Pennsylvania:

The petition of Walter Gobitis, of Minersville, in Schuylkill County, Pennsylvania, individually, and as next friend of Lillian Gobitis and William Gobitis, respectfully represents:

I. That Walter Gobitis is the father of Lillian Gobitis and William Gobitis, who are minors, and is a natural-born citizen of the United States and of the Commonwealth of Pennsylvania, and resides at 15-17 Sunbury Street in the City of Minersville, Pennsylvania, and brings this petition individually, and as next friend of Lillian Gobitis and William Gobitis, minors.

II. That Lillian Gobitis, age 13 years, and William Gobitis, age 12 years, are minors and residents of Minersville School District of Minersville, Pennsylvania, and have resided there continuously for many years.

III. That the Minersville School District is a public school district embracing the City of Minersville, Schuylkill County, Pennsylvania, and adjacent territory, under and by virtue of the laws of the Commonwealth of Pennsylvania; that the defendants David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans, and William Zapf are now and at all times material hereto, constitute the duly elected, qualified and acting Board of Education of such school district and as such are a body politic and corporate in law and have the management and control of the Minersville Public Schools; that the defendant Charles E. Roudabush, is the superintendent of the Minersville Public Schools and acts as such under the direction, supervision and order of said Board of Education; that all of the defendants are residents of Minersville, Pennsylvania, and citizens of the Commonwealth of Pennsylvania and of the United States.

IV. That the aforesaid Minersville Public Schools were and are free public schools and are under the supervision and jurisdiction of the said Board of Education.

V. The court has jurisdiction of this suit for the following reasons:

1. The suit is to redress the deprivation, under color of a regulation of the Board of Education of the Minersville Public Schools of rights, privileges, and immunities secured to complainants by the Constitution of the United States.

2. The value of the right for which petitioners seek protection, to wit, the right of his children to obtain an education in the public schools of the Commonwealth of Pennsylvania and in the school maintained by the Minersville School District is a valuable personal and property right to the

complainant Walter Gobitis, and the right to obtain and receive such education is a valuable personal and property right to said minor complainants, and the denial to complainants of such right has and is causing them damage in excess of the sum or value of $3000 exclusive of interest and costs, and the controversy arises under the Constitution of the United States.

VI. The complainant Walter Gobitis is now, and was at all times material hereto, a resident and taxayer of said Minersville School District, and his said children Lillian Gobitis and William Gobitis, being likewise residents of said district and within school age, are eligible to and have the right to attend said Minersville Public Schools, and are entitled to all of the benefits of education and training taught in and provided by said schools; that being desirous of having his said children obtain an education, complainant Walter Gobitas placed his said children in the said Minersville Public Schools at the beginning of the scholastic year 1935-1936. Complainants further allege that said children at all times during their attendance of said schools conducted themselves in accordance with the rules and regulations applicable to said schools, were not disqualified in any way from attending the same, and were obedient pupils and industrious scholars, applying themselves to their studies to the best of their ability.

VII. Complainants further allege that heretofore, to wit, on the sixth day of November A. D. 1935 at a regular meeting of the said Board of Education of the Minersville Public Schools there was adopted and entered on the minutes of such meeting a school regulation in words and figures as follows, to wit:

> "That the Superintendent of the Minersville Publice Schools be required to demand that all teachers and pupils of said schools be required to salute the flag of our country as a part of the daily exercises. That refusal to salute the flag shall be regarded as an act of insubordination and shall be dealt with accordingly."

VIII. Complainants allege that they are members of an unincorporated association of Christian people designated as Jehovah's Witnesses; that each and every one of Jehovah's Witnesses has entered into an agreement or covenant with Jehovah God, wherein they have consecrated themselves to do His will and obey His commandments; they accept the Bible as the word of God, and conscientiously believe that a failure to obey the precepts and commandments laid down therein will in due time result in their eternal destruction. Complainants and all of Jehovah's Witnesses sincerely and honestly believe that the act of saluting a flag contravenes the law of God in this, to wit:

1. To salute a flag would be a violation of the divine commandment stated in verses 4 and 5 of the twentieth chapter of Exodus of the Bible, which reads as follows, to wit:

> "Thou shalt not make unto thee any graven image, or any likeness of any thing that is in heaven above, or that is in the earth beneath, or that is in the water under the earth;
>
> "Thou shalt not bow down thyself to them, nor serve them . . .",

in that said salute signifies that the flag is an exalted emblem or image of the government and as such entitled to the respect, honor, devotion, obeisance and reverence of the saluter.

2. To salute a flag means in effect that the person saluting the flag ascribes salvation and protection to the thing or power which the flag stands for and represents, and that since the flag and the government which it symbolizes is of the world and not of Jehovah God, it is wrong to salute the flag, and to do so denies the supremacy of God, and contravenes His express command as set forth in Holy Writ.

IX. Complainant Walter Gobitis alleges that he has at all times endeavored to instruct and inform his said chil-

dren in the truths set forth in God's Work, the Bible, desiring to educate them and bring them up as devout and sincere Christian men and women, all as it was his right, privilege and duty so to do; that said children have been so instructed from an early age and are now and have been at all times material hereto sincere believers in the Bible teachings and have faithfully endeavored to obey the commandments of Almighty God as set forth therein.

X. Complainants allege that they are American citizens and that they honor and respect their country and state, and willingly obey its laws, but that they nevertheless believe that their first and highest duty is to their God and His commandments and laws, and that true Christians have no alternative except to obey the Divine commandments and follow their Christian convictions.

XI. That at the meeting of the Board of Education of the Minersville Public Schools held on November 6, 1935, as aforesaid, and immediately after the passage of the regulation set forth in paragraph VII of this complaint, the defendant Charles E. Roudabush, acting under the direction and authority of said Board of Education aforesaid, as complainants are informed and believe, publicly announced, "I hereby expel from the Minersville Schools Lillian Gobitis, William Gobitis and Edmund Wasliewski for this act of insubordination, to wit, failure to salute the flag in our school exercises."

XII. That the said Lillian Gobitis and William Gobitis did not and were conscientiously unable to salute the flag because their religious beliefs and manner of worship forbade such salute, and the givi. of such salute was in contravention of and in conflict with the commands of Almighty God, as they sincerely believed.

XIII. That since the sixth day of November A. D. 1935, the said Lillian Gobitis and William Gobitis, as a result of said order of expulsion, have been unable to attend and

have not attended their respective classes in the aforesaid Minersville Public Schools.

XIV. That the sole reason for the said expulsion and their subsequent inability to attend classes at the said school was the alleged refusal by the said Lillian and William Gobitis to salute the flag as required by the regulation of the Board of Education hereinbefore referred to.

XV. That under the school laws of the Commonwealth of Pennsylvania the said Walter Gobitis is required to cause his children, the said Lillian and William Gobitis, regularly to attend the public schools of the school district in which the said Walter Gobitis resides, or to attend a private school in which there is given instruction equivalent to that provided in the public schools for children of similar grades and attainments.

XVI. That the said Walter Gobitis is financially unable to have his said children Lillian and William Gobitis attend a private school in which there is given instruction equivalent to that provided by the public schools for children of similar age and attainments, or to obtain for them equivalent instruction elsewhere than at the said public school.

XVII. Complainants have no adequate remedy at law to prevent the aforesaid injury and damage.

XVIII. The regulation of the Board of Education hereinbefore referred to and set out in full in paragraph VII of this petition is unconstitutional, null and void under the due process clause of the 14th Amendment to the Constitution of the United States for the following reasons, to wit: It denies liberty and rights of property without due process of law; denies to complainants equal protection of the laws; and denies freedom of worship of Almighty God in accordance with the dictates of conscience.

XIX. The regulation aforesaid, if valid on its face, is unconstitutional, null and void as applied to the complain-

ants Lillian Gobitis and William Gobitis under the due process clause of the Fourteenth Amendment of the Constitution of the United States for the following reasons, to wit:

1. It unreasonably restricts the freedom of religious belief and worship and the free exercise thereof, of said complainants.

2. It unreasonably restricts the freedom of speech of said children by subjecting them to the penalties of dismissal from school and of juvenile delinquency, solely because they are conscientiously unwilling and unable to salute the flag.

3. It discriminates against children in the public schools by requiring them to salute the flag whereas it does not make such a requirement of the rest of the population, and thereby denies the said Lillian Gobitis and William Gobitis the equal protection of the laws guaranteed them by the Fourteenth Amendment to the Federal Constitution.

XX. The regulation aforesaid and the proceedings thereunder as applied to the complainants Lillian Gobitis and William Gobitis are unconstitutional, null and void under the Eighth Amendment to the Constitution of the United States in that cruel and unusual punishments are inflicted on said complainants, to wit, excluding them from the Minersville Public Schools and subjecting them to the penalties of juvenile delinquency solely because they are conscientiously unwilling and unable to salute the flag.

XXI. The regulation, if valid on its face, is unconstitutional, null and void as applied to the complainant Walter Gobitis under the due process clause of the Fourteenth Amendment to the Constitution of the United States for the following reasons, to wit:

1. It unreasonably restricts the liberty of Walter Gobitis in his choice and direction that his said children be educated at free public schools.

2. It unreasonably restricts the liberty of said Walter Gobitis by subjecting him to penalties of prosecution and punishment under the compulsory school attendance laws of the Commonwealth of Pennsylvania, not for his own conduct, but for the conduct of his children in failing to salute the flag.

3. It unreasonably restricts the liberty of said Walter Gobitis freely to impart to his said children Bible teachings and a manner of worship according to the dictates of his own conscience.

4. It denies the said Walter Gobitis of the property right to have his children, the said Lillian Gobitis and William Gobitis, educated in the free public school of the City of Minersville, without charge.

XXII. Complainants further allege that the acts, conduct and decisions of said defendants aforesaid cannot be justified under the police power in that the failure and refusal to salute the flag on the part of said minor complainants does not and cannot affect the public interest or safety or the rights and welfare of others.

WHEREFORE, your complainants, being without remedy save in a court of equity where such matters are properly cognizable, pray:

1. That the regulation of the Board of Education of Minersville Public Schools set out in the petition be declared and decreed to be null and void as violative of the due process clause of the Fourteenth Amendment to the Constitution of the United States as claimed in the petition.

2. That its application to petitioners be decreed to be violative of the rights of petitioners under the due process clause of the Fourteenth Amendment to the Constitution of the United States, as claimed in this petition.

3. That the said defendants, and each of them, and all persons acting under their authority and direction be enjoined and restrained from doing the following acts:

(a) From continuing in force the expulsion order expelling said minor complainants from school and prohibiting their attendance at said schools.

(b) From requiring and ordering said minor complainants to salute the flag during the course of the patriotic exercises conducted at said schools, or at any other time while in attendance at said schools.

(c) From in anywise hindering or molesting or interfering with the right of said minor complainants to enjoy full religious freedom in the manner dictated by conscience.

(d) That complainants may have such other and further relief as to the Court may seem just and proper.

H. M. McCAUGHEY,
Attorney for Complainants.

O. R. BOYLE,
Of Counsel.

EASTERN DISTRICT OF PENNSYLVANIA,
STATE OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA, } *ss.:*

Personally appeared before me, a notary public in and for said county and State, WALTER GOBITIS, complainant above named, who, being duly sworn according to law, deposes and says that the facts set forth in the foregoing bill in equity, so far as stated upon his own knowledge, are true, and so far as stated upon information, he believes them to be true, and expects to be able to prove them to be true upon the trial of this cause.

WALTER GOBITIS.

Subscribed and sworn to before me this third day of May, A. D. 1937.

KATHRYN L. McHUGH,
(Seal) *Notary Public, Philadelphia County.*
Commission expires February 19, 1941.

MOTION TO DISMISS BILL OF COMPLAINT.

(Filed May 27, 1937.)

Now come Minersville School District: Board of Education of Minersville School District, consisting of David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans and William Zapf, and Charles E. Roudabush, superintendent of Minersville Public Schools, defendants, by their attorneys, John B. McGurl, Esquire, and Rawle & Henderson, Esquires, and move the Court to dismiss the bill of complaint filed in the above-entitled case upon grounds and reasons therefor as follows:

1. The matters set forth in plaintiffs' bill of complaint do not involve a dispute or controversy within the jurisdiction of this Court.

2. The plaintiffs failed to allege any facts which specifically or inferentially substantiate plaintiffs' allegation that the matter complained of is causing them damage in excess of the sum or value of $3000 exclusive of interest and costs.

3. Under the facts set forth in plaintiffs' bill of complaint, the plaintiffs' suit does not involve a controversy arising under the Constitution of the United States.

4. Under the facts set forth in plaintiffs' bill of complaint, the plaintiffs have not been deprived of any right, privilege or immunity secured by the Constitution of the United States.

5. The bill of complaint fails to set forth a good cause of action or to entitle the plaintiffs to the relief prayed for.

6. The alleged rights for which the plaintiffs seek protection are not such rights as entitle them to the relief sought.

7. The bill of complaint fails to show that the plaintiffs have sustained or in the future are likely to sustain any

loss, damage or injury for which the defendants are liable either at law or in equity.

8. Under the Constitution of the United States and under the Constitution and laws of the State of Pennsylvania the defendants have full power and authority to adopt the regulation complained of and to enforce its provisions as set forth in the bill of complaint.

Therefore the defendants and each of them respectively move the Court to dismiss the bill of complaint with their reasonable costs and charges on their behalf most wrongfully sustained.

MINERSVILLE SCHOOL DISTRICT: BOARD OF EDUCATION OF MINERSVILLE SCHOOL DISTRICT, Consisting of DAVID I. JONES, DR. E. A. VALIBUS, CLAUDE L. PRICE, DR. T. J. MCGURL, GEORGE BEATTY, THOMAS B. EVANS and WILLIAM ZAPF, and CHARLES E. ROUDABUSH, SUPERINTENDENT OF MINERSVILLE PUBLIC SCHOOLS,
Defendants,

By JOHN B. MCGURL,
RAWLE & HENDERSON,
By JOSEPH W. HENDERSON,
Attorneys for Defendants.

OPINION

Sur Motion to Dismiss Bill of Complaint.

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

No. 9727. March Term, 1937.

IN EQUITY.

Walter Gobitis, Individually, and Lillian Gobitis and William Gobitis, Minors, by Walter Gobitis, Their Next Friend,

Complainants,

v.

Minersville School District: Board of Education of Minersville School District, Consisting of David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans and William Zapf, and Charles E. Roudabush, Superintendent of Minersville Public Schools;

Defendants.

December 1, 1937.

MARIS, *J.*

The plaintiffs, Walter Gobitis, and his two minor children, Lillian and William, have filed their bill in equity against the School District of the Borough of Minersville, Schuylkill County, Pennsylvania, and against eight individuals, seven of them comprising the Board of School Directors of the School District, and one of them being the superintendent of schools of the district.

The bill avers that the minor plaintiffs, who reside in the Borough of Minersville, attended the public schools conducted by the defendants prior to November 6, 1935. On that day the defendant school directors adopted a school

regulation requiring all teachers and pupils of the schools to salute the American flag as a part of the daily exercises and providing that refusal to salute the flag should be regarded as an act of insubordination and should be dealt with accordingly. Plaintiffs, who are members of a body of Christians known as Jehovah's Witnesses, are conscientiously opposed upon religious grounds to saluting the flag, since they consider such action to be a direct violation of divine commandments laid down in the Bible. The minor plaintiffs, having been conscientiously unable, because of their religious beliefs and manner of worship, to salute the flag as required by the regulation of the defendant school directors, above referred to, they were on November 6, 1935, expelled, by the defendant superintendent of schools, from the public schools conducted by the defendants and by reason thereof have since been unable to attend those schools.

The bill further avers that plaintiff, Walter Gobitis, is financially unable to provide an education for the minor plaintiffs at a private school and that the refusal of the defendants to permit them to remain in the public schools has damaged him in excess of $3000. Alleging that the defendants' regulation violates the Fourteenth Amendment to the Federal Constitution, in that it unreasonably restricts the freedom of religious belief and worship and the free exercise thereof of the plaintiffs, the bill seks an injunction rstraining the defendants from enforcing the regulation against the plaintiffs. The defendants have moved to dismiss the bill upon the grounds that a good eause of action is not set forth and that, even if it is, this Court has no jurisdiction to entertain it.

In disposing of defendants' motion the facts set forth in the bill and the inferences properly to be drawn therefrom must be taken to be true. Considering them in this light we will first examine the cause of action averred by the bill. It is claimed on behalf of the minor plaintiffs that they have the right to attend the defendants' public schools: indeed that they are required by law to attend them unless

they can secure equivalent education privately. This, however, Walter Gobitis avers he is financially unable to provide. They further contend that the enforcement of defendants' regulation conditions their right upon their participation in what is to them a religious ceremony to which they are conscientiously opposed, thus depriving them of their liberty of conscience without due process of law. They also say that, since they are required by law to attend defendants' public schools, being financially unable to secure an equivalent education privately, they are by reason of the regulation in question placed under legal compulsion to participate in an act of worship contrary to the dictates of their consciences.

Under Section 1414 of the School Code, as recently amended, (24 P. S. Sec. 1421), the minor plaintiffs are required to attend a day school continuously throughout the entire term during which the public elementary schools in their district shall be in session, until they respectively reach eighteen years of age. Sec. 1423 of the School Code (24 P. S. Sec. 1430) provides that every parent of any child of school age who fails to comply with the provisions of the act regarding compulsory attendance is guilty of a misdemeanor. In the light of these statutory provisions and of Section 1 of Article X of the State Constitution which directs the General Assembly to "provide for the maintenance and support of a thorough and efficient system of public schools, wherein all the children of this Commonwealth above the age of six years may be educated," we conclude that the minor plaintiffs have a right to attend the public schools and indeed a duty to do so if they are unable to secure an equivalent education privately.

Section 3 of Article I of the Constitution of Pennsylvania provides that "All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; . . . no human authority can, in any case whatever, control or interfere with the rights of conscience . . ." This is but the expression of

the full and free right which, as Mr. Justice Miller said in Watson v. Jones, 80 U. S. 679, in this country is conceded to all "to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights."

The right of conscience referred to in the Pennsylvania Constitution was defined by Chief Justice Gibson in Commonwealth v. Lesher, 17 S. & R. 155, to be "a right to worship the Supreme Being according to the dictates of the heart; to adopt any creed or hold any opinion whatever on the subject of religion; and to do, or forbear to do, any act for conscience sake, the doing or forbearing of which, is not prejudicial to the public weal." In these words that eminent jurist clearly stated the principle which underlies the constitutional provisions of all the states and which is one of the fundamental bases upon which our nation was founded, namely, that individuals have the right not only to entertain any religious belief but also to do or refrain from doing any act on conscientious grounds, which does not prejudice the safety, morals, property or personal rights of the people.

In applying this principle it is obvious that the individual concerned must be the judge of the validity of his own religious beliefs. Liberty of conscience means liberty for each individual to decide for himself what is to him religious. If an individual sincerely bases his acts or refusals to act on religious grounds they must be accepted as such and may only be interfered with if it becomes necessary to do so in connection with the exercise of the police power, that is if it appears that the public safety, health or morals or property or personal rights will be prejudiced by them. To permit public officers to determine whether the views of individuals sincerely held and their acts sincerely undertaken on religious grounds are in fact based on convictions religious in character would be to sound the death knell of religious liberty. To such a pernicious and alien doctrine this court cannot subscribe.

In the present case the bill avers that the refusal of the minor plaintiffs to salute the flag is based on conscientious religious grounds. It seems obvious that their refusal to salute the flag in school exercises could not in any way prejudice or imperil the public safety, health or morals or the property or personal rights of their fellow-citizens. Certainly no such suggestion was made by the defendants at the argument. However, in the view we have taken such prejudice or peril, if it exists, is a matter of defense. Consequently we must hold on this motion that the action of the minor defendants in refusing for conscience sake to salute the flag, a ceremony which they deem an act of worship to be rendered to God alone, was within the rights of conscience guaranteed to them by the Pennsylvania Constitution. The conclusion is inescapable that the requirement of that ceremony as a condition of the exercising of their right or the performance of their duty to attend the public schools violated the Pennsylvania Constitution and infringed the liberty guaranteed them by the fourteenth amendment.

We are aware that a number of courts have reached a contrary conclusion. Hering v. State Board of Education, 117 N. J. L. 455, 189 A. 629, affirmed N. J. L. ; 194 A. 177; Leoles v. Landers, Ga. ; 192 S. E. 218; Nicholls v. Mayor and School Committee of Lynn, Mass. ; 7 N. E. (2d) 577. In each of these cases it was held that the salute to the flag could have no religious significance. In so holding, however, it appears to us that the courts which decided these cases overlooked the fundamental principle of religious liberty to which we have referred; namely, that no man, even though he be a school director or a judge, is empowered to censor another's religious convictions or set bounds to the areas of human conduct in which those convictions should be permitted to control his actions, unless compelled to do so by an overriding public necessity which properly requires the exercise of the police power. Furthermore it appears that the

courts in these cases largely relied on Hamilton v. Regents, 293 U. S. 245, in which the Supreme Court held that a regulation of the University of California making military training compulsory for all students did not unduly infringe the liberty of students who were opposed to war and military training on religious grounds. That decision, however, was placed upon the ground that although the right to entertain the beliefs, to adhere to the principles and to teach the doctrines on which these students based their objections to military training is included in the religious liberty of the individual, that liberty had not been infringed by the regulation in question since the objecting students were not required by law to attend the University, and in any event the right of the state in the interest of public safety to require its citizens to prepare for its defense by force of arms was paramount to their right to religious liberty. In that case Mr. Justice Butler said:

> "There need be no attempt to enumerate or comprehensively to define what is included in the 'liberty' protected by the due process clause. Undoubtedly it does include the right to entertain the beliefs, to adhere to the principles and to teach the doctrines on which these students base their objections to the order prescribing military training. Meyer v. Nebraska, 262 U. S. 390, 399. Pierce v. Society of Sisters, 268 U. S. 510. Stromberg v. California, 283 U. S. 359, 368-369. Near v. Minnesota, 283 U. S. 697, 707. The fact that they are able to pay their way in this university but not in any other institution in California is without significance upon any constitutional or other question here involved. California has not drafted or called them to attend the university. They are seeking education offered by the State and at the same time insisting that they be excluded from the prescribed course solely upon grounds of their religious beliefs and conscientious objections to war, preparation for war and military education. Taken on the basis of the facts

alleged in the petition, appellants' contentions amount to no more than an assertion that the due process clause of the Fourteenth Amendment as a safeguard of 'liberty' confers the right to be students in the state university free from obligation to take military training as one of the conditions of attendance.

"Viewed in the light of our decisions that proposition must at once be put aside as untenable.

"Government, federal and state, each in its own sphere owes a duty to the people within its jurisdiction to preserve itself in adequate strength to maintain peace and order and to assure the just enforcement of law. And every citizen owes the reciprocal duty, according to his capacity, to support and defend government against all enemies. Selective Draft Law Cases, supra, p. 378. Minor v. Happersett, 21 Wall. 162, 166."

In the case before us the attendance of the minor plaintiffs at defendants' schools is, as we have seen, required by law. Furthermore their refusal to salute the flag does not prejudice the public safety. Consequently Hamilton v. Regents, supra, does not support the validity of the regulation here involved. On the contrary that regulation, although undoubtedly adopted from patriotic motives, appears to have become in this case a means for the persecution of children for conscience sake. Our beloved flag, the emblem of religious liberty, apparently has been used as an instrument to impose a religious test as a condition of receiving the benefits of public education. And this has been done without any compelling necessity of public safety or welfare. We may well recall that William Penn, the founder of Pennsylvania, was expelled from Oxford University for his refusal for conscience sake to comply with regulations not essentially dissimilar, and suffered, more than once, imprisonment in England because of his religious convictions. The Commonwealth he founded was intended as a haven for all those persecuted for conscience sake. The

provisions of its constitution to which we have referred were undoubtedly intended to secure to its citizens that religious freedom which had been denied their ancestors in the countries from which they came. These constitutional provisions must be construed in the light of that history. Maxwell v. Dow, 176 U. S. 581; People v. Harding, 53 Mich. 481, 51 Am. R. 95; Farmers & Mechanics Bank v. Smith, 3 S. & R. 63. In these days when religious intolerance is again rearing its ugly head in other parts of the world it is of the utmost importance that the liberties guaranteed to our citizens by the fundamental law be preserved from all encroachment. Our conclusion is that the plaintiffs have stated a good cause of action.

The defendants' motion also raised the question of the jurisdiction of this court to entertain the action. This the plaintiff contends is conferred by Subsections (1) and (14) of Section 24 of the Judicial Code (28 U. S. C. Sec. 41).

Subsection (1) of Section 24 of the Judicial Code gives the District Courts jurisdiction "of all suits of a civil nature, at common law or in equity, . . . where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000, and (a) arises under the Constitution or laws of the United States, . . ."

Subsection (14) confers jurisdiction "of all suits . . . in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage, of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States."

The suits referred to in subdivision (14) are those authorized by Section 1979 R. S. (8 U. S. C. Sec. 43), which provides that "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citi-

zen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

The question which we must determine is whether the rights which the plaintiffs claim have been invaded arise under the Constitution of the United States within the meaning of Subsection (1) of Section 24 of the Judicial Code, or are secured by the Constitution within the meaning of subsection (14). If they do not, then the case does not fall within either subdivision and this court has no jurisdiction.

It is quite clear that plaintiff's rights are not secured by the Federal Constitution but are secured, if at all, by the Constitution and laws of Pennsylvania. The only provision of the Federal Constitution on the subject is contained in the first amendment and that merely prohibits Congress from making any law "respecting an establishment of religion or prohibiting the free exercise thereof". It confers no rights upon these plaintiffs; Permoli v. Municipality No. 1 of the City of New Orleans, 44 U. S. 589. Nor does the fourteenth amendment, which provides that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of . . . liberty . . . without due process of law", have that effect. The privileges and immunities protected by this amendment are only those that belong to citizens of the United States as distinguished from citizens of the states—those that arise from the Constitution and laws of the United States as contrasted with those that spring from other sources. Hamilton v. Regents, supra, p. 261. Nor does the due process clause secure to the plaintiffs the rights in question. That clause merely protects existing personal liberties from undue abridgment by the states. It does not itself secure to individuals any new or additional lib-

erties. Subdivision (14) relates only to rights *secured* by the Constitution or laws of the United States. It follows that this court has no jurisdiction of the suit under that subdivision.

Do we, however, have jurisdiction of the suit under subdivision (1) as of a case involving $3,000 and arising under the Constitution of the United States? So far as the jurisdictional amount is concerned there is a clear averment in the bill that plaintiff, Walter Gobitis, is financially unable to provide an education for the minor plaintiffs at a private school and that the refusal of the defendants to permit them to remain in the public schools has damaged him in excess of $3,000. We cannot say, as a matter of law, that it will not cost him $3,000 to complete the education of the minor plaintiffs at private schools. Consequently we must hold that the court has jurisdiction so far as the amount involved is concerned.

There remains the question whether the suit is one *arising* under the Constitution of the United States. The liberty protected by the due process clause of the fourteenth amendment undoubtedly includes the liberty to entertain any religious belief, to practice any religious principle and to do any act or refrain from doing any act on conscientious grounds, which does not endanger the public safety, violate the laws of morality or property or infringe on personal rights. Hamilton v. Regents, supra, (p. 262). The prohibition of the due process clause is against action by the states and it follows that if the State of Pennsylvania has deprived the plaintiffs of their religious liberty without due process of law the case *arises* under the fourteenth amendment to the Federal Constitution and this court has jurisdiction of the bill under subdivision (1) of Section 24 of the Judicial Code.

This brings us to the final question whether from the averments of the bill it appears that the State of Pennsylvania has done so. As we have already indicated the enforcement against the minor plaintiffs of the regulation in

question appears to deprive the plaintiffs of the liberty of conscience guaranteed them by the Pennsylvania Constitution and protected by the fourteenth amendment to the Federal Constitution. The regulation would consequently run afoul of the due process clause if its adoption and enforcement can be said to be the action of the state.

It is clear that the defendant school district is an arm of the state, Ford v. School District, 121 Pa. 543; and that its regulations adopted within the scope of the authority granted to it by the statutes of the state, are the acts of the state within the meaning of the fourteenth amendment. New Orleans Waterworks Co. v. Louisiana Sugar Refining Co., 125 U. S. 18; North American Cold Storage Co. v. Chicago, 211 U. S. 306. It is equally clear that if the regulation in question was adopted without statutory authority or in direct violation of a statutory prohibition it is not the act of the state and cannot give rise to a federal question. Barney v. New York, 193 U. S. 430; Memphis v. Cumberland Teleph. & Teleg. Co., 218 U. S. 624.

The authority conferred by the Pennsylvania School Code upon the defendant school district is to adopt "and enforce such reasonable rules and regulations as it may deem necessary and proper . . . regarding the conduct and deportment of all pupils attending the public schools in the district." 24 P. S. Sec. 338. It will thus be seen that the power conferred upon the defendant school directors was to adopt such regulations as are reasonable. There is in the present bill, however, no averment that the regulation in question is unreasonable. Relief is not sought upon the ground that the defendants are without power under the School Code to adopt and enforce the regulation or that they are prohibited by it from doing so. Obviously it cannot be said that the regulation is unreasonable per se or that considered generally it is repugnant to the Constitution or laws of the state. It is only in its application to the minor plaintiffs that it violates the constitutional guarantees. What we have here is an action by public officers,

agents of the state, within the scope of the power conferred upon them by statute which when applied to these plaintiffs deprives them of their liberty of conscience in violation of the fourteenth amendment. Such an abuse of power presents a case arising under the Constitution, and this court accordingly has jurisdiction under subsection (1) of Section 24 of the Judicial Code. Hom. Teleph. & Teleg. Co. v. Los Angeles, 227 U. S. 278. In the case just cited Chief Justice White said: (pp. 287-289)

> "To speak broadly, the difference between the proposition insisted upon and the true meaning of the Amendment is this: that the one assumes that the Amendment virtually contemplates alone wrongs authorized by a state, and gives only power accordingly, while in truth the Amendment contemplates the possibility of state officers abusing the powers lawfully conferred upon them by doing wrongs prohibited by Amendment. In other words, the Amendment, looking to the enforcement of the rights which it guarantees and to the prevention of the wrongs which it prohibits, proceeds not merely upon the assumption that states, acting in their governmental capacity, in a complete sense, may do acts which conflict with its provisions, but, also conceiving, which was more normally to be contemplated, that state powers might be abused by those who possessed them, and as a result might be used as the instrument for doing wrongs, provided against all and every such possible contingency. Thus, the completeness of the Amendment in this regard is but the complement of its comprehensive inclusiveness from the point of view of those to whom its prohibitions are addressed. Under these circumstances it may not be doubted that where a state officer, under an assertion of power from the state, is doing an act which could only be done upon the predicate that there was such power, the inquiry as to the repugnancy of the act to the 14th Amendment cannot be avoided by in-

sisting that there is a want of power. That is to say, a state officer cannot, on the one hand, as a means of doing a wrong forbidden by the Amendment, proceed upon the assumption of the possession of state power, and at the same time, for the purpose of avoiding the application of the Amendment, deny the power, and thus accomplish the wrong. To repeat: for the purpose of enforcing the rights guaranteed by the Amendment when it is alleged that a state officer, in virtue of state power, is doing an act which, if permitted to be done, prima facie would violate the Amendment, the subject must be tested by assuming that the officer possessed power if the act be one which there would not be opportunity to perform but for the possession of some state authority."

It may be thought, in view of the fact that the plaintiffs' rights arise under the Pennsylvania Constitution and the defendants' action, being in violation of that constitution, is unconstitutional and void, that it is therefore not the action of the state within the meaning of the fourteenth amendment but rather a matter to be dealt with first by the state courts. This very question, however, was presented in Home Teleph. & Teleg. Co. v. Los Angeles, supra, and in disposing of it the court held that the fact that the State Constitution also prohibited the action in question did not deprive the federal court of jurisdiction or require that the matter be first litigated in the state courts.

The motion to dismiss the bill is denied.

JOINT AND SEVERAL ANSWERS

Of Minersville School District: Board of Education of Minersville School District, David I. Jones, Dr. A. E. Valebus (Misnamed in the Above Caption), Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans and William Zapf, and Charles E. Roudabush. Superintendent of Minersville Public Schools.

(Filed December 30, 1937.)

The answer of Minersville School District: Board of Education of Minersville School District, David I. Jones, Dr. A. E. Valebus (misnamed in the above caption), Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans and William Zapf, and Charles E. Roudabush, superintendent of Minersville Public Schools, defendants in this cause now and at all times saving and reserving to themselves all manner of objections and exceptions to complainants' bill and without in any way waiving the many errors, uncertainties and imperfections of complainants' bill of complaint filed, for answer thereto, or to so much thereof as is necessary to answer, say:

1. The defendants admit the allegations in paragraph one.

2. The defendants admit the allegations in paragraph two.

3. The defendants admit the allegations in paragraph three except the allegation that said school district embraces territory adjacent to Minersville, Pennsylvania. On the contrary, defendants aver that said school district embraces only the Borough of Minersville. Defendants further aver that David I. Jones is no longer a member of the Board of Education of Minersville School District, having been succeeded by Dr. E. W. Keith, subsequent to the filing of complainants' bill in equity.

4. The defendants admit the allegations in paragraph four.

5. Defendants deny that this Court has jurisdiction of this proceeding for the reasons set forth in paragraph five or for any other reason. On the contrary, defendants aver under the facts set forth in complainants' bill of complaint that the plaintiffs have not been deprived of any right, privilege or immunity secured to them by the Constitution of the United States, and that, therefore, this Court has no jurisdiction under Subsection 14 of Section 24 of the Judicial Code, as amended (28 U. S. C. A., Section 41 (14)). Defendants further aver that under the facts set forth in complainants' bill of complaint the plaintiffs' suit does not involve a controversy arising under the Constitution of the United States, and that the plaintiffs have failed in said bill to allege any facts which specifically or inferentially substantiate plaintiffs' allegation that the matter complained of is costing them damage in excess of the sum or value of three thousand dollars ($3000), exclusive of interest and costs, and, therefore, this Court has no jurisdiction under Subsection 1 of Section 24 of the Judicial Code, as amended (28 U. S. C. A., Section 41 (1)).

Defendants further aver that they have heretofore filed a motion to dismiss plaintiffs' bill of complaint on the grounds that a good cause of action has not been set forth, and that even if a good cause of action has been set forth, this Court has no jurisdiction to entertain plaintiffs' suit. The defendants further aver that this Court has no jurisdiction for the reasons set forth in said motion to dismiss, which reasons are incorporated into this joint and several answers by reference thereto and raised as an additional defense to the plaintiffs' bill of complaint.

6. Denied. Defendants deny that the minor plaintiffs, Lillian Gobitis and William Gobitis, at all times during their attendance at the Minersville Public Schools conducted themselves in accordance with the rules and regulations applicable to said schools and were not disqualified in any way from attending the same and were obedient pupils. On the contrary, defendants aver that minor plaintiffs, Lillian Go-

bitis and William Gobitis, knowingly and wilfully violated the regulation adopted by the Board of Education of the Minersville Public Schools requiring pupils to salute the American flag as part of the daily exercises, and that by reason thereof said minor plaintiffs were expelled from the Minersville Public Schools for said act of insubordination.

7. Defendants admit the allegations in paragraph seven.

Defendants further aver that said regulation was reasonable, and that the adoption thereof was within the authority of the Board of Education of Minersville Public Schools and did not violate any Federal or State statute or any provision in the Constitution of the United States or the Constitution of the State of Pennsylvania.

Defendants further aver that subsequent to the adoption of said regulation and pursuant to the requirements contained therein, it has been and still is the custom and practice of the teachers and pupils of the Minersville Public Schools at the opening of school to rise, place their right hands on their respective breasts and to speak the following words: "I pledge allegiance to the flag of the United States of America, and the Republic for which it stands; one nation indivisible, with liberty and justice for all." The teachers and pupils, while the aforesaid words are being spoken, extend their respective right hands so as to salute the flag.

8. Defendants aver that they have no knowledge as to whether the plaintiffs are members of an unincorporated association known as Jehovah's Witnesses, and that since the means of proving said allegation are under the exclusive control of plaintiffs, defendants deny the same and demand strict proof at the trial of this cause.

The defendants further aver that they have no knowledge as to whether the plaintiffs have entered into an agreement with Jehovah God or entertained the beliefs referred to in paragraph eight, and since the means of proving said

allegation are under the exclusive control of plaintiffs, defendants demand strict proof at the trial of this cause. Defendants further aver that they have no knowledge concerning the nature or character of the agreement or covenant entered into by members of Jehovah's Witnesses or as to the beliefs of the members of said association as set forth in paragraph eight, and therefore, defendants deny the same, and, if material, demand strict proof thereof at the trial of this cause.

Defendants further specifically deny that the act of saluting the national flag is a violation of the divine commandment stated in verses 4 and 5 of the twentieth chapter of Exodus of the Bible, and that the act of saluting the flag means in effect that the persons saluting the flag ascribe religious salvation to the power for which the flag stands, and that saluting the flag contravenes any express command in the Bible. On the contrary, defendants aver that the act of saluting the national flag is not an act of a religious nature or character whatsoever, but is merely an acknowledgment of the temporal sovereignty of the United States of America; which does not go beyond that which is reasonably due to any government.

9. Defendants aver that they have no knowledge concerning the truth or falsity of the allegations in paragraph nine of plaintiffs' bill of complaint, and that since the means of proving said allegations are under the exclusive control of plaintiffs, defendants deny the same and, if material, demand strict proof thereof at the trial of this cause.

10. Denied. Defendants deny that the complainants honor and respect their country and state and willingly obey its laws. On the contrary, defendants aver that the minor plaintiffs, by failing to salute the national flag at the daily opening of the Minersville Public Schools, and the father plaintiff by his teachings, acquiescence and ratification of said conduct, have knowingly and wilfully dishonored and been disrespectful to their country and state and have violated its laws.

Defendants further aver that they have no knowledge concerning the beliefs of the plaintiffs as set forth in paragraph ten of the bill of complaint, and since the means of proving the same are under the exclusive control of plaintiffs, defendants deny the same and, if material, demand strict proof thereof at the trial of this cause.

11. Defendants admit the allegations in paragraph eleven.

12. Defendants have no knowledge regarding the allegations set forth in paragraph twelve of the bill of complaint, and since the means of proving the same are under the exclusive control of the minor plaintiffs, defendants deny the same and demand strict proof thereof at the trial of this cause.

13. Defendants admit the allegations in paragraph thirteen.

14. Defendants admit the allegations in paragraph fourteen.

15. Defendants aver upon advice of counsel that the allegations in paragraph fifteen are conclusions of law which need be neither admitted nor denied by defendants.

Defendants further aver that in lieu of attending the Minersville Public Schools or a private school the statutory requirement of attendance would be met by the minor plaintiffs attending a public school in an adjoining school district.

16. Defendants have no knowledge as to the financial ability of Walter Gobitis to have his children attend a private school or to obtain for them equivalent instruction elsewhere than at the Minersville Public Schools, and since the means of proving the same are under the exclusive control of Walter Gobitis, defendants deny the same and, if material, demand strict proof thereof at the trial of this cause.

17. Defendants aver upon advice of counsel that the allegations in paragraph seventeen are conclusions of law which need be neither admitted nor denied by defendants. Defendants further aver, for the reasons as set forth in the within answers, that the plaintiffs have neither sustained nor are sustaining any injury or damage for which the defendants are liable.

18. Defendants aver upon advice of counsel that the allegations in paragraph eighteen are conclusions of law which need be neither admitted nor denied by defendants. Defendants, however, further aver upon advice of counsel that the said regulation of the Board of Education does not violate the due process clause of the Fourteenth Amendment to the Constitution of the United States; that said regulation does not deny to the plaintiffs liberty and rights or property without due process of law; that said regulation does not deny to the plaintiffs equal protection of the laws, and that said regulation does not deny to the plaintiffs the freedom to worship Almighty God according to the dictates of their consciences.

19. Defendants aver upon advice of counsel that the allegations in paragraph nineteen are conclusions of law which need be neither admitted nor denied by defendants. Defendants, however, further aver upon advice of counsel that said regulation does not violate the due process clause of the Fourteenth Amendment to the Constitution of the United States, so far as it is applicable to the minor plaintiffs; that said regulation does not unreasonably restrict the minor plaintiffs' freedom of religious belief and worship and their free exercise thereof; that it does not unreasonably restrict the freedom of speech of said minor plaintiffs; that said regulation does not discriminate against children in the public schools as distinguished from the rest of the population, nor deny to the minor children protection of the laws guaranteed by the Fourteenth Amendment to the Federal Constitution.

20. Defendants aver upon advice of counsel that the allegations in paragraph twenty are conclusions of law which need be neither admitted nor denied. Defendants, however, further aver upon advice of counsel that said regulation as applied to the minor plaintiffs does not violate the Eighth Amendment to the Constitution of the United States, and that the adoption and enforcement of said regulation has not inflicted upon the minor plaintiffs any cruel and unusual punishments, but that the minor plaintiffs by their conduct have subjected themselves to the punishment of having been expelled from the Minersville Public Schools and subjected themselves to penalties of juvenile delinquency.

21. Defendants aver upon advice of counsel that the allegations in paragraph twenty-one are conclusions of law which need be neither admitted nor denied. Defendants, however, further aver upon advice of counsel that said regulation as applied to the plaintiff, Walter Gobitis, does not violate the due process clause of the Fourteenth Amendment to the Constitution of the United States; that said regulation does not unreasonably restrict the liberty of Walter Gobitis in the education of his children at free public schools; that said regulation does not unreasonably restrict the liberty of Walter Gobitis, and that the adoption and enforcement of said regulation has not unreasonably subjected Walter Gobitis to prosecution and punishment under the laws of this Commonwealth, but that Walter Gobitis by his conduct, as well as the conduct of his children, has subjected himself to possible prosecution under the compulsory school attendance laws of this Commonwealth; that said regulation does not unreasonably restrict the liberty of Walter Gobitis to freely impart to his children Bible teachings and a manner of worship according to the dictates of his conscience, and that said regulation does not deny Walter Gobitis a property right to have his minor children educated in the Minersville Public Schools without charge. Defendants further aver upon advice of

counsel that the privilege to have his children attend the public schools is not a property right which will be protected in this or any other proceeding, but is merely an advantage bestowed upon the plaintiffs by this Commonwealth.

22. Defendants aver upon advice of counsel that the allegation that the acts, conduct and decisions of the defendants cannot be justified under the police power is a conclusion of law which need be neither admitted nor denied. The defendants, however, deny that the failure and refusal of the minor plaintiffs to salute the national flag does not and cannot affect the public interest or safety or the rights and welfare of others. On the contrary, defendants aver that the adoption of the regulation referred to in plaintiffs' bill of complaint and its enforcement was not in violation of any provision in the state or federal constitutions or of any law of this Commonwealth or of the United States; that said regulation was adopted pursuant to the provision in the School Code, Act of May 16, 1911, P. L. 309, as amended, (24 P. S., Section 1551) requiring that "civics, including loyalty to the state and national government" be taught in every elementary public school; that said regulation was adopted by the Board of Education of Minersville Public Schools as a method of teaching loyalty to the state and national government; that in the opinion of the Board of Education the act of saluting the national flag, as provided in said regulation, is a necessary and reasonable method of teaching loyalty to the state and federal government and of inculcating patriotism and love of country into the young citizens of this nation; that the failure or refusal of any pupil or group of pupils to salute the national flag would be disrespectful to the government of which the flag is a symbol and would tend to promote disrespect for that government and its laws, with the result that the public welfare and safety and well-being of the citizens of the United States would be ultimately harmed and seriously affected thereby.

All of which matters and things these defendants are ready and willing to aver, maintain and prove as your Hon-

orable Court shall direct, and humbly pray to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

MINERSVILLE SCHOOL DISTRICT,
By DR. A. E. VALIBUS.

BOARD OF EDUCATION OF MINERSVILLE SCHOOL DISTRICT,
By DR. A. E. VALIBUS.

DAVID I. JONES.
DR. A. E. VALIBUS.
CLAUDE L. PRICE.
DR. T. J. MCGURL.
GEORGE BEATTY
THOMAS B. EVANS.
WILLIAM ZAPF.
CHARLES E. ROUDABUSH.

JOHN B. MCGURL,
RAWLE & HENDERSON,
By JOSEPH W. HENDERSON,
Attorneys for Defendants.

STATE OF PENNSYLVANIA, }
COUNTY OF SCHUYLKILL, } *ss.:*

DR. A. E. VALIBUS, being duly sworn according to law, deposes and says that he is president of Minersville School District, one of the defendants named in the foregoing answers; that he is authorized to and does make this affidavit on its behalf; that he has read the said answers and the facts therein stated as are within the deponent's knowledge are true and correct, and as to the other facts, he is informed of, believes and therefore avers the same to be true and correct, and so expects to be able to prove at the trial of this cause.

DR. A. E. VALIBUS.

Sworn to and subscribed before me this twenty-eighth day of December, A. D. 1937.

DORIS M. TIERNEY,
(Seal) *Notary Public.*
My commission expires March 2, 1941.

STATE OF PENNSYLVANIA, }
COUNTY OF SCHUYLKILL, } *ss.:*

DR. A. E. VALIBUS, being duly sworn according to law, deposes and says that he is president of the Board of Education of Minersville School District, one of the defendants named in the foregoing answers; that he is authorized to and does make this affidavit on its behalf; that he has read the said answers and the facts therein stated as are within the deponent's knowledge are true and correct, and as to the other facts, he is informed of, believes and therefore avers the same to be true and correct, and so expects to be able to prove at the trial of this cause.

DR. A. E. VALIBUS.

Sworn to and subscribed before me this twenty-eighth day of December, A. D. 1937.

DORIS M. TIERNEY,
(Seal) *Notary Public.*
My commission expires March 2, 1941.

STATE OF PENNSYLVANIA, }
COUNTY OF SCHUYLKILL, } *ss.:*

DAVID I. JONES, DR. A. E. VALEBUS, CLAUDE L. PRICE, DR. T. J. MCGURL, GEORGE BEATTY, THOMAS B. EVANS, WILLIAM ZAPF and CHARLES E. ROUDABUSH, being duly sworn according to law, jointly and severally depose and say that they are the defendants named in the above cause; that they have read the foregoing joint and several answers; that each deponent further avers and says that the facts set forth in the foregoing joint and several answers as are within his own knowledge are true and correct, and that as to all other facts, the deponent is informed of, believes and therefore avers the same to be true and correct and so expects to be able to prove at the trial of this cause.

DAVID I. JONES.
DR. A. E. VALIBUS.
CLAUDE L. PRICE.
DR. T. J. MCGURL.
GEORGE BEATTY.
THOMAS B. EVANS.
WILLIAM ZAPF.
CHARLES E. ROUDABUSH.

Sworn to and subscribed before me this twenty-eighth day of December, A. D. 1937.

DORIS M. TIERNEY,
(Seal) *Notary Public.*
My commission expires March 2, 1941.

SUGGESTION OF DEATH OF GEORGE H. BEATTY, ONE OF THE DEFENDANTS.

(Filed April 5, 1938.)

And Now, to Wit, this fifth day of April, A. D. 1938, it is suggested of record that George H. Beatty, one of the defendants in the above-entitled case, died on the thirtieth day of January, A. D. 1938.

John B. McGuire,
Rawle & Henderson,
By Joseph W. Henderson,
Attorneys for Defendants.

ORDER.

(Filed August 2, 1938.)

And now, to wit this second day of August A. D., 1938, the attached stipulation of counsel for the respective parties in the above-entitled cause having been presented to and maturely considered by the Court,

It Is Ordered that the statement of evidence taken upon the trial of the above-entitled cause, in the condensed narrative form attached to said stipulation, be and the same hereby is approved and the said narrative statement shall be filed in the clerk's office and become a part of the record for the purposes of appeal.

By THE COURT,

Maris, *J.*

STIPULATION.

(Filed August 2, 1938.)

It is hereby stipulated and agreed by and between Harry M. McCaughey, Esquire, attorney for plaintiffs and John B. McGurl, Esquire, and Rawle & Henderson, Esquires, attorneys for defendants, that the statement of testimony and evidence taken upon the trial of the above-entitled cause, in the condensed narrative form thereof attached hereto, may be approved by the Court, and, subject to the approval of the Court, become a part of the transcript of record to be certified to the United States Circuit Court of Appeals for the Third Circuit, and that all formalities regarding preparation, lodgment, notice, presentation, approval and filing of said condensed statement of evidence is hereby expressly waived.

H. M. McCaughey,
Attorney for Plaintiffs.
John B. McGurl,
Rawle & Henderson,
By Joseph W. Henderson,
Attorneys for Defendants.

STATEMENT OF EVIDENCE.

(Filed August 2, 1938.)

Be it remembered that upon the final hearing of the above-entitled matter on bill, answer and proofs on the fifteenth day of February, A. D. 1938, before the Honorable Albert B. Maris, then District Judge for the Eastern District of Pennsylvania, at Philadelphia, Pennsylvania, the following proceedings were had and evidence introduced which is hereby reduced to narrative form pursuant to Equity Rule 75.

The plaintiffs appeared by O. R. Moyle, Esquire, and Harry M. McCaughey, Esquire, as counsel.

The defendants appeared by John B. McGurl, Esquire, Joseph W. Henderson, Esquire, and George M. Brodhead, Jr., Esquire, as counsel.

Immediately prior to the presentation of plaintiffs' case, counsel for the defendants made the following motion to dismiss plaintiffs' bill of complaint.

MR. HENDERSON: May it please the Court, this matter was first brought before you on a bill in equity filed by the complainants, and then a motion to dismiss filed by the school board, the Minersville School District. Your Honor has ruled upon that and is familiar with the matter.

Since that time we have filed an answer. I now, therefore, wish to file a further motion to dismiss the bill of complaint, and if your Honor desires, I want to set forth the same motion that I did with reference to the motion to dismiss before we filed an answer, and for the purpose of the record it may appear, and I can just ask the stenographer to copy it.

THE COURT: Very well.

MR. HENDERSON: Exactly the same motion that we filed before, a motion to dismiss.

THE COURT: You may submit it to the stenographer.

MR. HENDERSON: From 2 to 6 inclusive, which are exactly the same ones that are in the record already.

"MOTION TO DISMISS BILL OF COMPLAINT.

NOW COME MINERSVILLE SCHOOL DISTRICT: BOARD OF EDUCATION OF MINERSVILLE SCHOOL DISTRICT, consisting of DAVID I. JONES, DR. E. A. VALERIUS, CLAUDE L. PRICE, DR. T. J. McGURL, GEORGE BEATTY, THOMAS B. EVANS and WILLIAM ZAPF, and CHARLES E. ROUDABUSH, superintendent of Minersville Public Schools, defendants, by their attorneys John B. McGurl, Esquire, and Rawle & Henderson, Esquires, and move the Court to dismiss the bill of complaint filed in the above-entitled case upon grounds and reasons therefor as follows:

1. .....

2. The plaintiffs failed to allege any facts which specifically or inferentially substantiate plaintiffs' allegation that the matter complained of is causing them damage in excess of the sum or value of $3000.00 exclusive of interest and costs.

3. Under the facts set forth in plaintiffs' bill of complaint, the plaintiffs' suit does not involve a controversy arising under the Constitution of the United States.

4. Under the facts set forth in plaintiffs' bill of complaint, the plaintiffs have not been deprived of any right, privilege or immunity secured by the Constitution of the United States.

5. The bill of complaint fails to set forth a good cause of action or to entitle the plaintiffs to the relief prayed for.

6. The alleged rights for which the plaintiffs seek protection are not such rights as entitle them to the relief sought."

MR. HENDERSON: Therefore, if your Honor please, we object to the taking of any testimony in this case upon the ground set forth in those motions.

THE COURT: For the reasons set forth in the opinion of the Court heretofore filed, the motion to dismiss is overruled, with an exception to the defendants.

PLAINTIFFS' EVIDENCE.

The plaintiffs introduced into evidence paragraphs 1, 2, 3, 4, 7, 11, 13 and 14 of their bill of complaint together with the specific admissions in the corresponding paragraphs of defendants' answer, as follows:

MR. MOYLE: May it please the Court, the answer filed by the defendant admits certain allegations of the complaint, and we would offer those allegations in evidence at this time.

"1. That Walter Gobitis is the father of Lillian Gobitis and William Gobitis, who are minors, and is a natural-born citizen of the United States and of the Commonwealth of Pennsylvania, and resides at 15-17 Sunbury Street in the City of Minersville, Pennsylvania, and brings this petition individually, and as next friend of Lillian Gobitis and William Gobitis, minors."

And 2——

THE COURT: You better read the answer into the record.

MR. MOYLE: The answer as to paragraph 1:

"1. The defendants admit the allegations in paragraph one," which I have just read.

THE COURT: Very well, then, proceed with the others. I just wanted the record to show the allegation and the answer.

MR. MOYLE:

"2. That Lillian Gobitis, age 13 years, and William Gobitis, age 12 years, are minors and residents of Minersville School District of Minersville, Pennsylvania, and have resided there continuously for many years."

The answer as to paragraph 2 reads:

"2. The defendants admit the allegations in paragraph two."

Paragraph 3 of the bill reads as follows:

"3. That the Minersville School District is a public school district embracing the City of Minersville, Schuylkill County, Pennsylvania, and adjacent territory, under and by virtue of the laws of the Commonwealth of Pennsylvania; that the defendants David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans, and William Zapf are now and at all times material hereto, constitute the duly elected, qualified and acting Board of Education of such school district and as such are a body politic and corporate in law and have the management and control of the Minersville Public Schools; that the defendant Charles E. Rondabush, is the superintendent of the Minersville Public Schools and acts as such under the direction, supervision and order of said Board of Education; that all of the defendants are residents of Minersville, Pennsylvania, and citizens of the Commonwealth of Pennsylvania and of the United States."

The answer as to paragraph 3 reads as follows:

"3. The defendants admit the allegations in paragraph three except the allegation that said school district embraces territory adjacent to Minersville, Pennsylvania. On the contrary, defendants aver that

said school district embraces only the Borough of Minersville. Defendants further aver that David I. Jones is no longer a member of the Board of Education of Minersville School District, having been succeeded by Dr. E. W. Keith, subsequent to the filing of Complainants' Bill in Equity."

Paragraph 4 of the bill reads as follows:

"4. That the aforesaid Minersville Public Schools were and are free public schools and are under the supervision and jurisdiction of the said Board of Education."

The answer as to paragraph 4 reads as follows:

"4. The defendants admit the allegations in paragraph four."

Paragraph 7 of the bill reads as follows:

"7. Complainants further allege that heretofore, to wit, on the 6th day of November A. D. 1935 at a regular meeting of the said Board of Education of the Minersville Public Schools there was adopted and entered on the minutes of such meeting a school regulation in words and figures as follows, to wit:

> 'That the Superintendent of the Minersville Public Schools be required to demand that all teachers and pupils of said schools be required to salute the flag of our country as a part of the daily exercises. That refusal to salute the flag shall be regarded as an act of insubordination and shall be dealt with accordingly.'"

The answer as to paragraph 7 reads as follows:

"7. Defendants admit the allegations in paragraph seven.

Defendants further aver that said regulation was reasonable, and that the adoption thereof was within the authority of the Board of Education of Minersville

Public Schools and did not violate any Federal or State statute or any provision in the Constitution of the United States or the Constitution of the State of Pennsylvania.

Defendants further aver that subsequent to the adoption of said regulation and pursuant to the requirements contained therein, it has been and still is the custom and practice of the teachers and pupils of the Minersville Public Schools at the opening of school to rise, place their right hands on their respective breasts and to speak the following words: 'I pledge allegiance to the flag of the United States of America, and the Republic for which it stands; one nation indivisible, with liberty and justice for all.' The teachers and pupils, while the aforesaid words are being spoken, extend their respective right hands so as to salute the flag."

Paragraph 11 of the bill reads as follows:

"11. That at the meeting of the Board of Education of the Minersville Public Schools held on November 6, 1935, as aforesaid, and immediately after the passage of the regulation set forth in paragraph VII of this complaint, the defendant Charles E. Roudabush, acting under the direction and authority of said Board of Education aforesaid, as complainants are informed and believe, publicly announced, 'I hereby expel from the Minersville Schools Lillian Gobitis, William Gobitis and Edmund Wasliewski for this act of insubordination, to wit, failure to salute the flag in our school exercises.'"

As to paragraph 11, the answer of the defendants reads as follows:

"11. Defendants admit the allegations in paragraph eleven."

Then as to paragraph 13 of the bill, it reads as follows:

"13. That since the 6th day of November A. D. 1935 the said Lillian Gobitis and William Gobitis, as a result of said order of expulsion, have been unable to attend and have not attended their respective classes in the aforesaid Minersville Public Schools."

As to paragraph 13, the answer of the defendants reads:

"13. Defendants admit the allegations in paragraph 13."

Paragraph 14 of the bill reads as follows:

"14. That the sole reason for the said expulsion and their subsequent inability to attend classes at the said school was the alleged refusal by the said Lillian and William Gobitis to salute the flag as required by the regulation of the Board of Education hereinbefore referred to."

As to paragraph 14, the answer reads:

"14. Defendants admit the allegations in paragraph fourteen."

I believe that covers all that are to be admitted.

THE COURT: Very well.

WALTER GOBITIS was the first witness to testify on behalf of the plaintiffs. He testified that he has lived in Minersville, Pennsylvania, all his life except for one year when a little boy; that he owns his own place and is a taxpayer; that his children, William Gobitis and Lillian Gobitis, attended the Minersville Public Schools until November 5, 1935, since which time Lillian Gobitis has attended a private school, called Jones Kingdom School, at Andreas, Pa., thirty miles east of Minersville, and Pottsville Business College, four miles distant from Minersville; and William Gobitis has attended the Jones Kingdom School at Andreas, Pennsylvania; and that prior to their expulsion he had

never received any complaints regarding his children obeying the rules and regulations of the school.

When interrogated as to his religious beliefs, Walter Gobitis testified as follows:

By Mr. Moyle:

Q. What is your religious belief?

A. I am a true and sincere follower of Christ Jesus, the Son of Jehovah God.

By Mr. Henderson:

Q. Not too fast; I want to get it.

A. I am a true and sincere follower of Christ Jesus, the Son of Jehovah God.

By Mr. Moyle:

Q. What association or group of followers of Christ Jesus are you connected with or a part of?

A. There are many others like myself who belong to——

Mr. Henderson: We object to that. Just answer the question, if you please.

By The Court:

Q. Are you a member of an organized group of Christians? That is the question. What is the name of the group?

A. I am a part of an unincorporated association of Christian people called Jehovah's Witnesses.

By Mr. Moyle:

Q. What is the relationship of Jehovah's Witnesses to their Creator, Jehovah God?

Mr. Henderson: Just wait on that a moment.

By Mr. Henderson:

Q. Do you have any written creed or doctrine?

A. Yes, we believe the Bible——

Q. No.

By THE COURT:

Q. Listen to the question and we will get along better. Do you have a written creed or statement of your principles which has been agreed upon by your group as representing your principles of belief?

A. Yes, the Bible is that creed.

Q. You have no other?

A. No.

By MR. MOYLE:

Q. In accordance with the teachings of the Bible, then, what is your relationship to the Creator so far as obeying his commandments is concerned?

MR. HENDERSON: I object to the form of that question, your Honor.

MR. MOYLE: That is proper, that is one of the allegations.

MR. HENDERSON: He can testify what his beliefs are, but I don't believe in accordance with the teachings of the Bible.

MR. MOYLE: All right, we will eliminate that.

THE COURT: Rephrase the question.

By MR. MOYLE:

Q. What is your belief, then, as to your relationship to Jehovah God?

A. As a follower of Christ Jesus, we must obey the commandments of God and preach the gospel of the kingdom.

Q. What agreement or covenant have you as a Christian entered into with Jehovah God?

A. That I would do that to the best of my ability.

MR. HENDERSON: If your Honor please—well, I will reserve that for cross-examination.

By Mr. Moyle:

Q. What is your belief as to the act of saluting a flag?

A. It is contrary to the commandment of God, to the second commandment, as stated in Exodus, 20th chapter, 3d verse and 4th verse.

By The Court:

Q. Will you state that? What is that so we will have it here?

By Mr. Moyle:

Q. Can you state that commandment offhand?

A. Yes.

"Thou shalt not make unto thee any graven image, or any likeness of any thing that is in heaven above, or that is in the earth beneath, or that is in the water under the earth:

Thou shalt not bow down thyself to them, nor serve them: for I the Lord thy God am a jealous God, visiting the iniquity of the fathers upon the children unto the third and fourth generation of them that hate me:

And showing mercy unto thousands of them that love me, and keep my commandments."

Q. You say that you believe that this applies to the act of saluting the flag, is that it?

A. I do.

Q. Is that the reason, if you know, why your children, William and Lillian Gobitis, refused to salute the flag in the Minersville Public Schools?

A. I think so.

Q. Have you talked with them or taught them that belief?

A. Well, I have taught them to believe and study the Bible for a long time, and they were baptized to serve God, too, and as we were talking things over at home, no doubt they got a lot of knowledge in that respect concerning idolatry, we have talked about that.

MR. HENDERSON: Your Honor, I ask the answer be stricken out as not responsive.

THE COURT: I think it is responsive; motion refused.

By MR. MOYLE:

Q. Is there any other reason from the standpoint of your sincere belief why you, as a Christian, would not salute the flag?

A. As the flag is used today, it is an image or likeness of something, and is worshiped, and the commandments of God are that we should not worship images or partake of idolatry.

The witness then testified that from the last week of December, 1935, to the end of May, 1937 (except for holidays and vacation periods), Lillian Gobitis attended the Jones Kingdom School at Andreas, Pennsylvania, and from September, 1937, to the date of hearing, to wit, February 15, 1938 (except for holidays and vacation periods) his daughter, Lillian, attended the Pottsville Business College, and that William Gobitis attended the said Jones Kingdom School from the last week of December, 1935, to the date of hearing, to wit, February 15, 1938, each of which schools are private schools as distinguished from public schools maintained by the State. The witness further testified that the pupils attending the Jones Kingdom School are only members of the sect called "Jehovah's Witnesses" and are only those which have been expelled from the public schools because they refused to salute the flag.

Walter Gobitis next testified regarding the moneys which he had already expended, subsequent to November, 1935, in connection with the education of his two minor children and what he would be required to expend in the future. The witness produced various receipted bills for the years 1935, 1936 and 1937 and testified as follows concerning the same:

By Mr. Moyle:

Q. Will you produce the bill for expense for the first year, 1935 and 1936? I will ask you, first, you have a receipted bill showing what you have paid for, do you?

A. I do.

Q. Will you produce that?

(Papers were produced by the witness.)

By Mr. Moyle:

Q. Will you produce all of your bills, then, of 1935 and 1936? Do you have any bills there for books, heat, light, and so on?

(Papers were produced by the witness.)

Q. Do you have those for transportation?

(Papers were produced by the witness.)

Q. And board?

(Papers were produced by the witness.)

Q. These are all 1935 and 1936?

A. Tax receipts for the borough or not?

Q. Not at this time. I want to get these in. Are these the bills for 1935 and 1936?

A. They are, excepting the first one there for tuition.

By Mr. Henderson:

Q. That is for 1937, as well?

A. That's right.

By Mr. Moyle:

Q. What other receipts have you got?

Mr. Henderson: Can we stick to one thing? Are these the school bills?

By Mr. Moyle:

Q. What other expenses do you have besides actual expenses of this school?

A. Well, I have attorneys' fees.

Q. On what?

A. I tried to get in touch with a lot of lawyers; I spent a lot of time and money getting advice what to do in the beginning.

MR. HENDERSON: I object to that, if your Honor please.

MR. MOYLE: That is expense.

MR. HENDERSON: I object to that as improper testimony in this case.

THE COURT: Objection sustained.

By MR. MOYLE:

Q. Any other bills? You mentioned something about a tax bill, is that school tax?

A. Yes, school tax bill, I have 1935, and 1937, and for the 1936 period I have only a cancelled check, I can't find the bill.

Q. Does that cancelled check represent your school tax?

A. That's right.

MR. HENDERSON: Mr. Moyle, if you propose to introduce these checks or any tax bills, I propose to object to them as not being a proper item of expense arising from the jurisdictional question in this case. They are property taxes.

MR. MOYLE: I suppose there might be some question on that, but it seems reasonable to me——

THE COURT: I don't think it possibly can form part of the question here. They are payable, whether he has children or not. He might have no children in school, and pay it just the same.

MR. HENDERSON: Do these represent the bills, otherwise?

MR. MOYLE: For the first year, 1935 and 1936, yes; that doesn't represent all of his bills. Do you want them all?

MR. HENDERSON: I understood him to say they went to a school at Andreas, Pa. I thought it was the Jones School; these bills say on them the Kingdom School. Is that the same thing?

MR. MOYLE: Same thing.

THE WITNESS: Same thing, yes.

MR. MOYLE: No objection to these being offered?

MR. HENDERSON: Yes, I have a very serious objection to their being offered, because, apparently, they have the expenses of his car from 1935 to date. That is the biggest item he has. The others I would like to cross-examine on.

THE COURT: Why don't you have them identified, and then examine the witness as to each one?

MR. MOYLE: All right.

THE COURT: Better have them marked.

MR. MOYLE: Mark all of those separately.

By MR. MOYLE:

Q. This bunch clipped together represents automobile bills, does it?

A. Automobiles, gas, repairs, yes, on that little slip.

Q. And this one represents tuition?

A. Tuition.

MR. MOYLE: I ask that be marked as Exhibit A.

(Tuition bill of the Kingdom School in the amount of $118 was marked Plaintiffs' Exhibit A.)

By MR. MOYLE:

Q. This one for $120 represents board and lodging, does it, for the children at the school?

A. That's right.

THE COURT: You are asking what they are; have they been marked?

MR. MOYLE: I was going to ask to have them marked after I ask him about them.

THE COURT: You better have them marked before you ask him.

MR. MOYLE: I ask that that be marked as Exhibit B.

(A bill for board and lodging dated February 11, 1938, was marked Plaintiffs' Exhibit B.)

By MR. MOYLE:

Q. I will show you Exhibit B and ask you if that is the bill representing expenses for board and room for the children in the school?

A. That's right, at the home next door to the school

Q. And Exhibit A is a bill representing the tuition cost?

A. That's right.

MR. HENDERSON: If your Honor please, I am reserving my objections to those——

THE COURT: They have not been offered yet.

MR. MOYLE: I ask that this be marked Exhibit C.

MR. HENDERSON: That is going to complicate it very much if you mark that batch Exhibit C.

THE COURT: Oh, yes, if it is all of the same class mark them as one exhibit.

MR. HENDERSON: I don't know how that will be, your Honor, but, however, we will see how we get along.

THE COURT: All right.

(A group of bills for automobile and transportation expenses were marked Plaintiffs' Exhibit C.)

By MR. MOYLE:

Q. I present to you Exhibit C; is that the receipted bills representing your automobile and transportation expenses for the children?

A. Yes.

Q. These are for the year 1935 and 1936, the school year?

A. Only one week of 1935.

By The Court:

Q. You mean one week of the calendar year 1935?

A. That's right.

Q. But it is for so much of the year of 1936 and 1935 as the children were in the present school?

A. One week of 1935.

Q. Well, I don't think you understand what I am asking you. There is such a thing as a school year, it begins in the fall and ends in the spring. It was the school year 1935-1936, beginning in the fall of 1935 and ending in the spring. The early part of that year they were in public school?

A. That's right.

Q. And some portion of that year they were in private school?

A. That's right.

Q. These bills represent a portion of that school year they were in private school, do they not?

A. That's right.

Mr. Moyle: We will offer these in evidence.

Mr. Henderson: I object, if your Honor please.

The Court: Upon what ground? Which are you offering?

Mr. Moyle: Exhibits A, B and C.

The Court: Let's take them one at a time.

Mr. Moyle: I will withdraw that. I will offer Exhibit A, which represents the tuition expense.

Mr. Henderson: I would like to ask a few questions to see if we want to object to it.

The Court: Very well, you may examine the witness.

Cross-Examination.

By Mr. Henderson:

Q. Mr. Gobitis, this particular bill has a name on it of Walter C. Knepper, of Tamaqua, Pa.; who was Mr. Knepper?

A. He is treasurer of our school board that we got together to handle the funds to pay the bills.

Q. You wrote up this receipt, did you?

A. No, he sent it to me.

Q. You have "Gobitas paid January 3, 1936," through to October 18, 1937, a total of $118. How do you arrive at those figures?

A. They were the actual payments I made on the dates I made them. I never kept receipts for every payment I made, and they never issued any.

Q. These are the payments you made to Mr. Knepper?

A. The record as that appeared on their books.

Q. For what purpose?

A. Paying for the teachers, only, and books, and some paraphernalia we have to pay.

Q. This represents the money you actually turned over to this church school?

A. It is not a church school.

Q. I am not trying to confuse you.

A. Private school.

Q. To a private school for the expenses of your two children, or for one child, or for what?

A. For two children, just for the teacher and some books.

By THE COURT:

Q. Was that your share of the expenses?

A. My share, yes.

Q. Computed, I suppose, in proportion because you had two children as related to the total number of children in the school?

A. Yes.

By MR. HENDERSON:

Q. Mr. Gobitas, were both of your children there last fall?

MR. MOYLE: That is objected to.

By MR. HENDERSON:

Q. 1935?

A. 1936 we are talking about, aren't you?

Q. Your bill is through to October, 1937.

A. You can strike out and change the total bill there where it ends at that particular time.

By THE COURT:

Q. Were your children there in 1937?

A. One was not, one already started in the fall of 1937 in the Pottsville Business College.

MR. HENDERSON: That is what I wanted to know.

By THE COURT:

Q. Is the other one still there?

A. The other one is still there in private school.

By MR. HENDERSON:

Q. Mr. Gobitas, why are the payments in the fall of 1937 when you had only one child there so much higher than they were during the winter of 1937 and the fall of 1936?

A. I don't say they are higher.

Q. Yes, they are quite a bit. They run $6 for two children, and then they run $8 for one child. Can you answer that?

A. The school term was only from December 29th until April, that's about four months, and the other is an eight-month period.

Q. Do you understand my question?

A. But per month is according to family arrangement.

Q. On September 8, 1937, which, I take it, is when the school opened last fall——

A. I thought you were back in 1936.

Q. I will come back in just a moment. Is that the time your school opened?

A. Yes.

Q. At that time you had one child in the school?

A. That's right.

Q. From September 8, 1937, your next payment is October 18, 1937, is that correct?

A. Yes.

Q. Your first payment was $8.60?

A. Yes.

Q. Now, there seems to be from January 15, 1937, to February 15, 1937, $5.30 for two children; from February 15, 1937, to March 22, 1937, was $6.30. I am only asking what made the great increase in the fall of 1937 over the spring of 1937. At one time you had two children, and then at the other time you had one.

A. It costs still more than that——

Q. Can you answer my question? Now, let's stick right to this one question.

A. According to the paraphernalia that was bought. They needed equipment for the school, and according to the families that were in the school at that time we paid. The rates varied.

Q. I see. That represents the total amount of tuition that you have paid to this private school?

A. That was used for tuition and books.

Q. $118. Now, Mr. Gobitas, you present here a receipt which apparently you have just procured a couple of days ago, dated February 11, 1938.

A. That's right.

Q. For board and lodging in the sum of $6 per week for twenty weeks from December 21, 1935, to May 2, 1936. Who wrote up that paper?

A. I did.

Q. For what purpose?

A. I never had any receipts; or never got any, because we didn't just get them, and I went back to that woman and asked her would she give me a written receipt showing how much money I paid out, and we computed it, wrote it down, she read it and signed her name and had the witness to it.

Q. From December 21, 1935, to May 2d, 1936, your school has twenty weeks, is that right?

A. That's right.

Q. During that time your children were in the home of this Verna S. Jones?

A. That's right.

Q. And she charged you $6 a week; during any of that time did the children come to you at Minersville?

A. Yes, they came home every Friday, and Monday they would go back to school.

Q. Every Friday at what time?

A. About four, five, six o'clock in the evening.

Q. And they would be, then, at your home until——

A. Monday morning, again, at sixty to seven-thirty.

Q. Outside of week-ends, from December, 1935, to May 2d, 1936, they were in the house of this Verna S. Jones, to whom you paid $120?

A. Yes, sir.

MR. HENDERSON: If your Honor please, I would like to have the stenographer hand up to you what has been marked as Exhibit C and I call your Honor's attention to the fact that that seems to be expenses for a truck.

By MR. HENDERSON:

Q. And do you have a truck?

A. Two trucks and a car.

Q. Well, it is the car that you have the loud speakers on?

A. No, sir, the truck is in my shop.

Q. And your business is what, Mr. Gobitas?

A. Retail meat market, produce, and grocery store.

Q. So, you run a truck; in addition to that, you run an automobile?

A. That's right.

Q. And which is the one that you have the loud speakers on?

A. In the car.

Q. Which one do you have it on?

A. I have it on my trailer attached to my car, my private sedan.

Q. These bills here represent the expense for your truck?

A. They represent all the expenses of all my cars. That small piece of paper is a memorandum taken from my books. My bookkeeper made that for the whole year, and those bills are only presented as proof I have paid out that money on oil, gas and repairs on those cars.

Q. On all those occasions?

A. Yes, sir.

MR. HENDERSON: If your Honor please, I object to that.

THE COURT: What is the relevancy of these automobile bills, truck bills, and so forth?

THE WITNESS: I don't have them separate.

DIRECT EXAMINATION (Continued).

By MR. MOYLE:

Q. What transportation did you furnish for your children? Where did you take them to? This Andreas school, how far is it?

A. Sixty miles every day a trip, and I used any one of the three cars.

By THE COURT:

Q. You didn't go every day?

A. It is only a twenty-week period.

Q. They boarded there from Monday to Friday?

A. For twenty weeks during the real severe weather, the other times I went every day.

MR. HENDERSON: These bills run from December to May; I imagine that is about when the school closed. I object to the bills, if your Honor please.

THE COURT: Objection sustained. You might show the number of times, if you can, that he transported them, and the distance. I think from that we might get a general idea.

By MR. MOYLE:

Q. How many trips did you make to take the children back and forth?

A. Twice a week.

MR. HENDERSON: If your Honor please, I wasn't able to hear that.

THE COURT: He says twice a week.

By THE COURT:

Q. In other words, you brought them home Friday and took them back on Monday, that was two round trips per week?

A. That's right.

By MR. MOYLE:

Q. How far is it?

A. Thirty miles one way.

Q. That is sixty miles, so you had at least two hundred and forty miles a month, each month, is that right?

A. That's right.

THE COURT: Twice that much.

MR. HENDERSON: You are quite correct, if your Honor please, one hundred and twenty miles a week.

MR. MOYLE: That's right.

By MR. MOYLE:

Q. Did you take them back and forth daily some of the time?

A. Sometimes daily.

Q. Do you know how often that was done?

A. In the first year they boarded there nearly all the time except some weeks when you couldn't get there. They stayed there all the time; sometimes we skipped a week or two, I didn't go for them.

Q. You don't have definite figures?

A. No.

Q. But you did make this trip back and forth each week?

A. That's right, every week.

Q. During the period. What car did you use?

A. Any one of the three which was convenient.

Q. Do you know what it costs you a mile to run your car?

A. Yes, sir.

MR. HENDERSON: Now, if your Honor please, I object to this, I think it is purely conjectural. There is nothing definite upon which to base it. He even says during part of this time in the winter he never even made any trips, there were some weeks he didn't even go at all. He doesn't pick up and go every time he wants to see his children; if he does, I don't think it can be put on the school district.

MR. MOYLE: It isn't being put on the school district.

MR. HENDERSON: It is a basis for the damage, which arrives at the same conclusion.

THE COURT: I will overrule the objection.

MR. HENDERSON: Will your Honor grant me an exception?

THE COURT: Exception to the defendants.

By MR. MOYLE:

Q. The question was do you know what it costs a mile to operate the car.

A. Yes, about easily eight cents a mile.

By MR. HENDERSON:

Q. Eight cents a mile?

A. We figure it both ways, four cents one way.

By MR. MOYLE:

Q. That is four cents a mile instead of eight cents?

By THE COURT:

Q. You are speaking of—I was going to say political method—maybe you call it the constable's method of so many miles in a circle?

A. I heard so much difference of opinion on how much it costs to run one; I don't know exactly what it costs, I never kept records of it.

Q. You estimate four cents a mile, as nearly as you can tell?

A. Yes.

MR. HENDERSON: I renew my motion, if your Honor please, to strike out all this testimony as being entirely conjectural and not being based on facts.

THE COURT: I think he has operated a car sufficiently to estimate it. I will overrule the motion, exception for the defendants.

By MR. MOYLE:

Q. That continued through that school year?

A. That's right.

MR. MOYLE: We would offer these other two exhibits, B and A in evidence.

THE COURT: They were offered, weren't they?

MR. MOYLE: Yes, I don't know whether they had been accepted or not.

THE COURT: I am not sure. If you haven't offered them, note the witness examined them, and they are offered in evidence. Any objection?

MR. HENDERSON: No objection.

THE COURT: They will be admitted.

(A copy of Plaintiffs' Exhibit A follows:

"Copy Feb. 10, 1938

KINGDOM SCHOOL

	Year 1936 & 1937
Gobitas Paid Jan. 3, 1936	16.67
" " Feb. 17, 1936	12.50

Gobitas Paid March 6, 1936	13.84
" " April 25, 1936	13.19
Total from Jan. to April for 1936	56.20
15 to 30, 1936	
Gobitas Paid Sept. 18, 1936	2.75
" " Oct. 2, 1936	5.75
" " Nov. 14, 1936	6.00
" " Dec. 7, 1936	6.30
" " Jan. 15, 1937	6.30
" " Feb. 15, 1937	6.30
" " Mar. 22, 1937.	6.30
" " April 6, 1937	6.30
TOTAL FOR 1936 & Part of 1937	$102.20
for 1937	
Gobitas Paid Sept. 8, 1937	8.60
" " Oct. 18, 1937	7.20
TOTAL	$118.00

Walter C. Knepper,
Tamaqua
Pa. R # 3
Treasurer."

PLAINTIFFS' EXHIBIT B.

"February 11, 1938

For Board and Lodging for Lillian and William Gobitas, I received from Walter Gobitas the sum of $6.00 per week for 20 weeks or total of $120.00.
From Dec. 21, 1935 to May 2nd, 1936.

/s/ Verna S. Jones
Witness

/s/ Erma Metzger.")

By Mr. Moyle:

Q. Now, Mr. Gobitis, as to the school year 1936 and 1937, will you produce receipted bills you have covering tuition?

Mr. Henderson: And they are all here?

The Witness: They are only on the one year's tuition in 1937 and 1936. 1937 and 1936 is on that Exhibit A. There is another one for the following year, and here are some for the Pottsville Business College in 1937.

By Mr. Henderson:

Q. Well, Mr. Gobitis——

Mr. Henderson: May I question him?

Mr. Moyle: Go ahead.

Cross-Examination (Continued).

By Mr. Henderson:

Q. This is another receipt made up February 11, 1938, that Mrs. Jones received $72 for board for Lillian and William Gobitis, and for lodging for three months, January, February and March, of 1937, is that right?

A. That's right.

Q. And during that time they were there all the time?

A. No, going back and forth, Monday and Friday.

By The Court:

Q. They were there during the week?

A. During the week.

By Mr. Henderson:

Q. This is based upon so much a week, or so much a month?

A. Three dollars a week per child.

Q. Then it is based on a week?

A. Yes.

Q. That bill is $72?

A. Yes.

Q. Now, Mr. Gobitis on this Pottsville Business College, these represent the bills that you have paid to the Pottsville Business College for your daughter Lillian?

A. That's right.

Q. And they carry through to, as a matter of fact, February 14, 1938, right up to date?

A. You can take one out, there are a few missing.

Q. Just listen to my question, please don't argue with me. I assume if there are any other bills, you have them here. This goes up to February 14, 1938.

A. It does. You can take that out.

Q. I am not interested in taking them out.

A. There are some I don't have; they aren't there; I don't have them.

MR. HENDERSON: You are going to offer these in evidence?

MR. MOYLE: Yes. I ask that be marked as Exhibit D.

(A receipt dated February 11, 1938, of Walter Gobitas, $72, signed by Verna S. Jones, was marked Plaintiffs' Exhibit D.)

DIRECT EXAMINATION (Continued).

By MR. MOYLE:

Q. I present to you Exhibit D, Mr. Gobitis, and ask you if that is a bill for board for Lillian and Walter at the school for 1936 and 1937, is that right?

A. Lillian and William, it says.

MR. MOYLE: We offer that in evidence.

(A copy of Plaintiff's Exhibit D follows:

"February 11, 1938

Received of Walter Gobitas the sum of $72.00 for board for Lillian and William Gobitas, and for lodging; for three months, January, February and March of 1937.

/s/ Verna S. Jones

WITNESS

/s/ Erma Metzger.")

By Mr. Moyle:

Q. Are these bills of the Pottsville Business College for the school year 1936 and 1937?

A. 1937 and 1938. I don't think they are all here, though. There is December, missing, and October missing. That would be $14 each, that is $28 more.

Q. I am interested just now in 1936 and 1937. Do you have any other receipted bills covering that year?

A. No.

Q. That is all you have on that?

A. Yes.

Q. Was the tuition covered in the previous?

A. Yes.

By The Court:

Q. Mr. Gobitis, I believe you offered the bill here, or identified a bill for board for the 1936-1937 school year. What was it, for January, February and March?

A. Just three months.

Q. What hapened during the remainder of the year?

A. Took them back and forth after that.

Q. What was the length of the school year?

A. At that time I think it began on Labor Day in September and ended in May.

By Mr. Henderson:

Q. Until the end of May?

A. Yes.

Q. And three months of that time they boarded, and the rest of the time you took them back and forth every day in your car?

A. Yes, sir.

By Mr. Moyle:

Q. And that is the same distance as you testified previously, is it?

A. That's right.

The Court: Same school, isn't it?

Mr. Moyle: Same school.

By Mr. Moyle:

Q. And they are all the items you have, then, for this 1936 and '37 year?

A. Yes, sir.

Mr. Moyle: Was there any objection to that bill?

Mr. Henderson: No, I didn't object to that bill.

The Court: What is that?

Mr. Moyle: That is Exhibit D, the Board for these three months.

The Court: It will be admitted.

By Mr. Moyle:

Q. Now, coming down to 1937 and 1938, at this time Lillian Gobitis is with the Pottsville Business College, is that right?

A. That's right.

Mr. Moyle: I think we will mark these separately.

(Bill dated Setember 27, 1937, of the Pottsville Business College to Lillian Gobitis in the sum of $18.10 was marked Plaintiffs' Exhibit E.)

(Bill dated November 3, 1937, of the Pottsville Business College to Lillian Gobitis in the sum of $16.60 was marked Plaintiffs' Exhibit F.)

(Bill dated November 22, 1937, of the Pottsville Business College to Lillian Gobitis in the sum of $12.85 was marked Plaintiffs' Exhibit G.)

(Bill dated January 17, 1938, of Pottsville Business College to Lillian Gobitas in the sum of $14.20 was marked Plaintiffs' Exhibit H.)

By Mr. Moyle:

Q. I present to you Exhibits E, F, G and H, Mr. Gobitis, and ask you what they are.

A. Just receipts for the months that they represent there, November, September, January, but there are two months missing.

By Mr. McGurl:

Q. What year?

A. 1937, November, September. The school year started September 23d, and it was $14 a month, and these are some receipts for it.

By The Court:

Q. You are paying $14 a month?

A. Yes.

Q. How long does the term last?

A. About ten months.

Q. Ten months?

Mr. McGurl: Not from September 23d, ten months, it couldn't be.

The Witness: I thought your Honor said how long is it going to last.

By The Court:

Q. How long will your daughter be in the Pottsville Business School?

A. Ten months.

Q. When will it terminate?

A. This is a secretarial-stenographer course, we intended to send her ten months.

Q. I see. You are intending to give her ten months in that school?

A. Yes.

The Court: Very well.

Mr. Henderson: Have you offered these bills in evidence?

Mr. Moyle: I will.

Mr. Henderson: I am going to object to them.

The Court: On what ground?

Mr. Henderson: Upon the ground they sent the daughter to business school, and that there are other schools available in that community. There is no evi-

dence they have tried to send the child to any other school, and I don't think the expense of sending her to this business college is a proper item.

THE COURT: I don't understand that. They were expelled from the public schools.

MR. HENDERSON: Only one, but there are plenty of schools in that adjacent country around there.

THE COURT: They were private schools as to them; in other words, if they were sent to some other school they would have to pay tuition.

MR. HENDERSON: But they wouldn't have to pay this.

THE COURT: Objection overruled, exception for the defendant.

(A copy of Plaintiffs' Exhibit E follows:

"Pottsville, Pa., Sept. 27, 1937

Lillian Gobitas

To

Pottsville Business College Dr.

4 weeks' Tuition to October 25, 1937	$14.00
Shorthand Outfit	4.00
Spelling Outfit	1.00
Rapid Calculation Tablet	.50
	19.50
Paid 9/27/37	1.40
	$ 18.10

Pottsville Bus. College
by F. Taylor")

(A copy of Plaintiffs' Exhibit F follows:

"Pottsville, Pa.,
Nov. 3, 1937.

Lillian Gobitas

To

Pottsville Business College

	Dr.
4 weeks' Tuition to Nov. 22, 1937	$14.00
Accounting Set to Start	4.00
Paid	18.00
11/3/37	1.40
	$16.60

Pottsville Bus. College
by F. Taylor.")

(A copy of Plaintiffs' Exhibit G follows:

"Pottsville, Pa.
Nov. 22, 1937.

Lillian Gobitas

To

Pottsville Business College Dr.

4 weeks' Tuition to Dec. 20, 1937	$12.60
10/25—Note Book & Tpw. Paper	.20
11/9—Lead Pencils	.05
	$12.85

Paid
11/24/37
Pottsville Bus. College
by F. Taylor")

(A copy of Plaintiffs' Exhibit H follows:

"Pottsville, Pa.,
Jan. 17, 1938

Lillian Gobitas
To
Pottsville Business College
Dr.

4 weeks' Tuition to Feb. 14, 1938	$12.60
Gregg Speed Study	1.50
Typewriter Paper	.10
	$14.20

Paid
(Stamped)
JAN 25 1938
POTTSVILLE BUSINESS COLLEGE
By F. Taylor")

By MR. MOYLE:

Q. How far is Pottsville from Minersville?
A. Four miles away.
Q. How does she get there?
A. On a bus back and forth every day.
Q. What does it cost her every day?
A. Ten cents a day.
Q. For how many days?
A. Five days.
Q. Five days a week?
A. Yes, sir.
Q. You have receipted bills covering the expense for William in the Andreas School for 1937 and 1938?
A. No, I do not; I didn't get a receipt for that.
Q. He is still attending there, is he?
A. That's right.
Q. He is there throughout the week?
A. Monday to Friday.
Q. Or do you take him back and forth?
A. Monday and Friday.
Q. What are you paying for board?

A. Three dollars a week.

Q. Have you paid anything for books and such matters?

A. I don't have a receipt from the teacher or from the treasurer for that. I don't think any additional books were taken, that's why they vary.

Q. What are you paying for tuition?

MR. HENDERSON: He has already introduced the bill in evidence.

MR. MOYLE: Oh, is that covered in this? Pardon me.

By THE COURT:

Q. How old is he now?

A. Thirteen now.

By MR. MOYLE:

Q. Did you make an effort to place the children in other public schools?

A. We have.

Q. Were you successful?

A. No.

Q. Do you know what grade William is in?

A. Now he is in eighth.

Q. He is in the eighth grade; Lillian is in the first year in this high school?

A. Business college, yes. I think William is in the seventh grade, though.

By THE COURT:

Q. How far did she go in this school?

A. Eighth, eighth is the last.

Q. Have you made any effort or plans to secure the equivalent of a high school education for these children?

A. I have. I have visited all the surrounding schools around the Borough of Minersville, and all are adamant, they will not admit children who refuse to salute the flag——

Q. Have you investigated any private schools?

A. I have received prices from some; they are higher than the rates we pay just for tuition, and they are so far away they would cost the same thing.

By Mr. Moyle:

Q. What does it cost you a year, then, at this Pottsville Business College?

A. It would cost about $220 for this first year, because you must buy your books and your equipment with which to operate; $14 a month for ten months, $140, and we had to buy equipment, $80.

Q. Do you think you could get by with $200 a year following that?

A. I think so.

Q. Is it your intention to send William to the same school?

A. If no public schools accept him, I will have to, even no matter what it costs.

Q. And you have four other children besides William and Lillian?

A. I do.

Q. The other children are not involved here——

Mr. Henderson: That has nothing to do with this case.

Mr. Moyle: Except under the same stipulation he has to finish the education.

The Court: Yes, but I don't think you can bring them in. Objection sustained. I think you are entitled to show, if you can, what it would cost him to provide education for these children until their eighteenth birthday.

Mr. Moyle: For these other children?

The Court: No, these two involved. Under the present school laws, as I understand it, they would be required to remain in school until they are eighteen. I don't know whether you have any evidence on that.

By Mr. Moyle:

Q. Lillian is now fourteen years of age?

A. That's right.

Q. So that she is, under the school laws, required to attend the public schools until she is eighteen, so there are four years in which you have to furnish this education?

A. Yes.

Q. Is $200 a year a reasonable estimate at what you can do that?

A. I think so.

Q. Do you think you can furnish education for that amount?

MR. HENDERSON: He has already answered that.

By MR. MOYLE:

Q. Can you furnish that education to William at $200 a year?

A. Yes.

Q. And he is now thirteen?

A. Twelve.

MR. HENDERSON: There is something wrong, then.

THE WITNESS: The record, I think, was in error the first time.

MR. HENDERSON: It is written into this testimony as twelve, and this was filed——

MR. MOYLE: The record shows twelve.

THE COURT: You can't make a person older than he is by agreement of counsel.

MR. HENDERSON: Not at all, I want it straight, whichever it is.

THE COURT: Find out.

By THE COURT:

Q. If you can, tell us when was your daughter, Lillian Gobitas, born?

A. I can't tell you. She is here, she can tell. I don't remember.

THE COURT: Can't you find out what the dates of birth of the two children are and stipulate it?

MR. MOYLE: Lillian says she was born November 2, 1923, and William, September 17, 1925.

MR. HENDERSON: Then the girl is fifteen and the boy is thirteen.

THE COURT: At the present moment.

MR. HENDERSON: At the present time.

By THE COURT:

Q. Mr. Gobitis, what I am trying to get at is this, if these children were attending the Minersville School—and I assume they have a high school in Minersville—they would let them go through high school until they were eighteen years of age and get a high school education; in fact, they would be required to under the present rule. Have you made any effort to secure through some private school conveniently located, or at a distance, if necessary, by means of boarding, equivalent, or have you planned to secure equivalent education for them, and if so, have you determined what it would cost?

A. Yes, sir.

Q. Not a mere business course, which is not the equivalent of a whole high school course, although I assume a high school would give the business course.

MR. MCGURL: It may be either, your Honor, the high school——

THE COURT: Yes, but as I understand it, a ten-months' course in a secretarial school is devoted to the studying of typewriting, bookkeeping and things of that kind, and not cultural subjects.

MR. MCGURL: No, but the high school in Minersville and other high schools in Pennsylvania give commercial education.

THE COURT: I understand that, but she wouldn't be getting in business college the cultural subjects she would be getting in high school.

MR. MCGURL: It is my understanding business colleges also give that.

THE COURT: You mean it is the equivalent of a high school? I don't think so; I may be wrong on that.

MR. MCGURL: I wouldn't want to answer that, but I think they do.

By THE COURT:

Q. You have investigated it, Mr. Gobitis?

A. Yes, I have.

Q. What is she getting there in school?

A. Just getting equipment for a commercial job to work at typewriting in some business.

Q. It doesn't take four years, does it? Ten months, you said?

A. I want to educate her and give her advantages; I have investigated, I have visited the private schools, I have gotten mail from them, and the costs are higher than what we pay at the present place.

By MR. MOYLE:

Q. What are the costs?

MR. HENDERSON: I object to that, if your Honor please.

THE COURT: I think we have gotten enough, unless you have something more definite.

By MR. MOYLE:

Q. What is your plan for William after he finishes the grammar school or grade school?

A. He will continue in the same private school until he graduates from it——

By THE COURT:

Q. What grade does that take him to, eighth grade?

A. Eighth grade. When he finishes eighth, if I can't get a cheap outside school before that time, I will send him to this business college to do the same kind of work.

By Mr. Moyle:

Q. And it is your intention to continue him in school during the time required by the state, that is, until he is eighteen years of age?

A. That's right.

Q. And the same with Lillian?

A. That's right.

Mr. Moyle: Cross-examine.

Cross-Examination (Continued).

By Mr. Henderson:

Q. Mr. Gobitis, have you tried any of the parochial schools around Minersville?

A. I have not.

Q. There are some, are there not?

A. There are.

Q. And there are some parochial high schools?

Mr. Moyle: Just a minute. I would object to that; I don't regard that as competent, and he might have a real sincere objection to a parochial school.

The Court: I know, but this is cross-examination; he is certainly entitled to be asked whether he has tried, and if not, why not.

The Witness: I have not, because I had good reasons for it.

By Mr. Henderson:

Q. The parochial schools, you know, do you not, that the cost of going there is very slight?

A. I think it is very high.

Q. You don't know, do you?

A. I don't.

Q. You have not tried any of the parochial schools in Minersville, itself?

A. I have not.

Q. Or anywhere around there?

A. I have reasons to know they would not accept them.

MR. MCGURL: That is objected to.

MR. HENDERSON: I ask that be stricken from the record, please.

By THE COURT:

Q. You didn't ask them?

A. I did not.

THE COURT: Motion granted.

By THE COURT:

Q. You had no contact with those in charge of the Roman Catholic schools in your neighborhood?

A. I have not.

MR. HENDERSON: That's all. If your Honor please, at this time I assume that my friends have nothing further to show on the matter of damage, and the jurisdictional question in order to get into this Court, and I move that the bill be dismissed on the ground that they have not shown the jurisdictional amount as required.

THE COURT: I don't know whether they have or not.

MR. HENDERSON: I have computed it, and I find it comes quite far short.

THE COURT: Well, I will overrule the motion for the present.

MR. HENDERSON: Will your Honor grant me an exception?

THE COURT: Yes, exception.

MR. HENDERSON: At this stage?

THE COURT: Yes.

By MR. HENDERSON:

Q. I meant to ask, Mr. Gobitis, you referred to the Fourth Commandment, did you not, instead of the Second?

A. I beg your pardon?

Q. You referred to the Fourth Commandment instead of the Second?

A. The Second.

Q. Well, your bill says the Fourth, and I think if you will look at the 20th Chapter of Exodus you will find it is the Fourth.

A. It might be the 4th verse, but it is only the Second Commandment. However, I have a Douay version of the Catholic Bible; it is that way there.

WILLIAM HENRY GOBITIS was the next witness on behalf of the plaintiffs, who, after having been duly sworn, was examined and testified that he was twelve years of age, that he was one of Jehovah's Witnesses, and that they are people who have consecrated their time to Jehovah in proclaiming His messages and who obey His commandments.

When asked why he did not salute the flag, he testified:

A. Because it is contrary to God's law.

Q. What law of God do you believe it is contrary to?

A. In Exodus, Chapter 20, verses 4 to 7.

Q. What does that say, if you will, or would you rather find it?

A. I can find it.

MR. MCGURL: Which one is that, now? Is that Douay?

MR. MOYLE: No, that is King James.

MR. HENDERSON: I thought his father would rather have a Catholic Bible. Would you rather have him use King James'?

By MR. MOYLE:

Q. What is the statement in the Bible which you believe prohibits saluting the flag?

A. Here I have it:

"Thou shalt not make unto thee any graven image, or any likeness of any thing that is in heaven above, or that is in the earth beneath, or that is in the water under the earth:

Thou shalt not bow down thyself to them, nor serve them: for I the Lord thy God am a jealous God, visiting the iniquity of the fathers upon the children unto the third and fourth generation of them that hate me;

And showing mercy unto thousands of them that love me, and keep my commandments."

Q. Have you consecrated yourself to the Lord?

A. Yes.

Q. What do you mean by that?

A. Devoting your time to Him and preaching the gospel.

Q. Do you believe the Bible?

A. Yes.

Q. Do you believe it contains God's law?

A. It is God's law.

Q. And that you should obey His commandments?

A. Yes.

Q. That is why you refuse to salute the flag, is it?

A. Yes.

MR. MOYLE: Cross-examine.

There was no cross-examination. The witness, however, was interrogated by the Court as to his love of country and desire to be a good citizen, and the witness said that he was born in this country, loved the country, wanted to be a good citizen and to do everything he could to be a good citizen of the United States.

LILLIAN GOBITIS next testified on behalf of the plaintiffs. After having been duly sworn, she testified that she was fourteen years of age and that she did not salute the flag in the Minersville School for the following reasons:

A. Because it was contrary to God's law.

Q. What law of God do you believe prohibits you from saluting the flag?

A. Exodus, 20th Chapter, and 5th verse.

Q. It is the same thing?

A. Also 1st John 21, 5: "Little children, keep yourselves from idolatry."

By MR. MOYLE:

Q. Do you believe——

MR. HENDERSON: If your Honor please, I ask that the latter part be stricken from the record; there is nothing in the bill that has anything to do with that.

THE COURT: The motion is refused.

By MR. MOYLE:

Q. Do you believe in being loyal to your country?

A. Yes.

Q. Did you obey the school regulations at Minersville in general?

A. Yes.

Q. That is the only one you had any difficulty with in the school?

A. Yes.

MR. MOYLE: Cross-examine.

There was no cross-examination nor any questions asked by the Court.

The plaintiffs next produced FREDERICK WILLIAM FRANZ, who, having been duly sworn, testified that he was a resident of Brooklyn, New York, where he was engaged in the editorial department of the Watch Tower Bible and Tract Society, to go over the material that is submitted for the publications of the society and to check up as to their accuracy in every respect. Counsel for the defendants thereupon called for an offer of proof.

MR. HENDERSON: If your Honor please, may I ask for an offer of proof in connection with this witness?

MR. MOYLE: May it please the Court, through this witness I hope to prove, or offer to prove that he is one

of Jehovah's Witnesses, that he has been one of Jehovah's Witnesses for many years and is thoroughly acquainted with the principles and teachings of Jehovah's Witnesses, especially concerning the salute to the flag, and concerning consecration to the Lord, and their obligation to obey His law, and such matters. Those matters are alleged in our bill and are denied by the defense.

MR. HENDERSON: If your Honor please, I object to it as immaterial. It is the belief of the Gobitises and not this gentleman.

THE COURT: Yes, they are members of the group; they have expressed their views. I don't know just what your position is, if your view is they don't hold these beliefs, that may be one thing. It may be immaterial. If, however, you concede that the views expressed by the witnesses are the religious beliefs——

MR. HENDERSON: There was some noise; I didn't hear.

THE COURT: I say if the defendants concede that the views which the plaintiffs have expressed on the stand are the religious beliefs that they hold, then I should say this is immaterial.

MR. HENDERSON: If your Honor please, of course, I am not in a position to concede anything in that connection. I think it is their belief, and it is not for me to state what their belief is, that is a question of fact. This has nothing to do with it.

MR. MOYLE: It would be only explanatory, I suppose.

THE COURT: Will you make your offer a little more fully, Mr. Moyle? Just what is it you are proposing to prove?

MR. MOYLE: We expect to show definitely through this witness that the law of God does prohibit a salute

to the flag, that Jehovah's Witnesses as a group of the Christian Church are definitely bound by that law and must obey it; that refusal to so obey it would result in eternal destruction, and that is a belief which Jehovah's Witnesses hold and sincerely maintain. I think we alleged that quite clearly in our bill. It is corroborative of the testimony offered by the complainants.

MR. HENDERSON: If your Honor please, I object to the offer.

THE COURT: It may go to the question of the sincerity of the religious beliefs which these people alleged that they hold. I will permit the testimony.

MR. HENDERSON: And grant me an exception?

THE COURT: Exception.

Subject to the objection of counsel for the defendants, F. W. Franz testified as follows:

By MR. MOYLE:

Q. Are you one of Jehovah's Witnesses?

A. Yes.

Q. How long have you been one of them?

A. Since the year 1913.

Q. You mentioned your work in the Watch Tower Bible and Tract Society office; what is the connection?

A. Jehovah's Witnesses are not incorporated as such, but they use the Watch Tower Bible and Tract Society as their servant, as their agent in carrying on the work and in supervising the work throughout the earth.

Q. Your full time is spent, is it, in this work of Jehovah's Witnesses and this society?

A. Yes, sir.

Q. How long have you devoted your full time to that, how many years?

A. I have been with the Watch Tower Society's office in Brooklyn since the year 1920, June, but more particularly doing this present work since the year 1927.

Q. Are you familiar, then, with the principles and teachings of Jehovah's Witnesses?

A. Yes, sir.

Q. Are you familiar with the Bible teachings?

A. Yes, sir.

Q. Especially concerning the salute to the flag?

A. Yes, sir.

Q. What is the nature of the agreement or covenant which Jehovah's Witnesses as Christians enter into with their Creator?

A. The Apostle Peter——

MR. HENDERSON: Just wait a minute. We object to that, if your Honor please. I don't see how any covenants entered into with Jehovah, except the opinion of the particular witness, are relative, or whatever organizations he belongs to. The fact that someone gets up here and says it isn't proper and according to their Biblical teachings to salute the flag may be their opinion, but I don't think it is testimony in a case.

MR. MOYLE: The allegation is denied by the defendants, sir, and I think it goes to the sincerity of their beliefs.

THE COURT: That doesn't necessarily mean it is relevant; you might make allegations that are immaterial. I am disposed to grant a reasonable latitude here; I am not sure just whether it is material or not. We will permit it.

MR. HENDERSON: Perhaps, if your Honor please, it is better that we go ahead, and then at the end of the testimony I will move to strike it out.

THE COURT: Yes, because there is no jury here.

MR. HENDERSON: Yes, and there is no use to take the time.

THE COURT: Yes.

MR. MOYLE: Read the question, Mr. Stenographer.

(The question was repeated by the Reporter as follows:

"Q. What is the nature of the agreement or covenant which Jehovah's Witnesses as Christians enter into with their Creator?")

A. First Peter, 2, verse 21, says that Christ has left us an example, that we should follow his steps. The Scriptures definitely mark the steps that Christ took. Before His birth, it was prophesied He would make an agreement or contract to do the will of His God, Jehovah, and His Father, who is Jehovah.

Psalm 40, verse 8, prophetically says, and puts the words into Christ's mouth, "Lo, I come to do Thy will, O My God." We are not left in doubt as to whom those words apply, because the Apostle Paul in Hebrews, the 10th chapter, definitely states that Christ undertook this covenant to do God's will, and he fulfilled this prophecy.

Hence, the covenant which Jehovah's Witnesses must make with God, according to the example of Christ, is this agreement to do God's will as it is written in the Book, the Bible. When Jesus was on trial for His life and appeared before the highest Roman court having jurisdiction in the land in which Jesus preached the Gospel, He said to the Roman Governor, Pontius Pilate:

"To this end was I born, and for this cause came I into the world, that I should bear witness to the truth. Everyone that is of the truth heareth My voice."

He also stated, "I am not come in My own name, but in My Father's name."

His Father is Jehovah. Hence, Jesus' own testimony bears witness to the truth that He was a witness for Jehovah, or Jehovah's Witness, and, hence, an example to all His disciples in this respect. Hence, anyone who covenants to do God's will, to follow after Christ, must be a witness for Jehovah. Every Christian must be such, and

he must, of course, keep all the commandments of God which relate to the bearing of testimony to the name of Jehovah and to the Government which he has prophesied and prepared to establish on the earth.

By MR. MOYLE:

Q. Now, Mr. Franz, what are the Commandments of God as revealed in His word, the Bible, relative to saluting a flag?

A. The Commandments are stated in numerous places in the Bible. You have a statement of this commandment in the 5th Chapter of Deuteronomy, but the first statement thereof is found in Exodus, Chapter 20, verses 4 and 5, as before referred to in this trial. The statement is that "Thou shalt not make unto Thee——"

MR. HENDERSON: If your Honor please, can't we eliminate it? It has been in two or three times.

THE COURT: Yes, I don't think it is necessary to repeat it again.

By MR. MOYLE:

Q. How do you understand that refers to saluting the flag, this Exodus 20th Chapter, verses 4 and 5?

A. The Commandment says that there shall be no image or any likeness of anything in Creation. A flag is a proper thing in its place. The Bible shows that the Israelites had flags, or standards, or banners. You read the Book of Numbers, Chapter 1, verse 52; Chapter 2, verses 2 and 3, and other verses in the same chapter; Chapter 10, also; all these show that the Israelites had flags. But these were merely markers showing the location of the various tribes to which the members of the Nation of Israel belonged, so that they could locate their position and their relation to the rest of the people of Israel.

However, these flags were not to be saluted, nor any signs or motions or acts of worship be made toward them. So, flags have a definite purpose and use which is legiti-

mate. But when one makes them a symbol or an emblem toward which one renders any cult or worship, adoration or service, then he definitely makes this an image or a likeness and his course of conduct thereto comes within the purview of this commandment and is a violation of the commandment.

The flag of any country, in particular, is a symbol. It is an emblem of certain principles toward which the country adheres. It is also a symbol of the Government. The American flag, from an account as presented in the *Encyclopedia Americana*, shows that every feature thereof has a significance, the number of stripes, the stars, the blue field, the colors, all have a symbolic meaning. The flag also represents the Government.

Now, it might be objected that saluting a flag does not violate this commandment because it is not bowing down to the flag, but bowing down to the flag is merely expressive of the Creator's feeling, or attitude, or belief with respect to the flag, and this expression, "Bow down to and serve," as stated in the commandment, covers all attitudes, postures, motions, acts which an individual may make toward the flag which makes the flag an idol or a thing of worship and of adoration.

For instance, the Bible not only speaks of bowing down to a symbol or a likeness of something in Creation, but to quote First Kings, Chapter 19, verse 18, the Lord God there shows that the Israelites might kiss an image, or they might wave or throw a kiss with a hand to an image. This was a violation of the commandment.

This same kissing, or throwing a kiss to an image, or to an object of nature as the sun, moon or stars, is also stated in Job, Chapter 31, verses 25, 26 and 27; also Hosea, Chapter 13, verse 2. The statement is, "Let the men that sacrifice kiss the calves," the calf idol, which was worshiped in those days.

We know that a kiss or throwing a kiss with the hand is a salutation, or a form of salutation. This is definitely

forbidden by the law of God with respect to any image or likeness, and, hence, is a violation of the spirit and purport of the Second Commandment.

Q. Now, Mr. Franz, what would be the penalty, if any, to a Christian, or one of Jehovah's Witnesses, who disobey such commandments?

A. Eternal annihilation, destruction. In Deuteronomy the 18th Chapter, verses 15, 18 and 19, Jehovah God states, through the Prophet Moses, that He would raise up His great Prophet or Spokesman, Christ Jesus, and that it should come to pass that every soul which would not hear the words which this Prophet spoke in Jehovah's name, God would require it of him.

The Apostle Paul in Acts, Chapter 3, verses 22 and 23, quotes this promise of God, and he says, "It shall come to pass, that every soul, which will not hear that Prophet shall be destroyed from among the people."

MR. MOYLE: Cross-examine.

There was no cross-examination, but counsel for the defendants moved to strike out the testimony of F. W. Franz, which motion was overruled by the Court, as follows:

MR. HENDERSON: If your Honor please, I now wish to renew my motion to strike out the testimony of this witness as immaterial in connection with this case. It is based, of course, upon opinion, and it has no particular bearing, so far as I can see it, in the case. The plaintiffs are the Gobitis'; if there is any religious belief that is involved, it is their religious belief. They belong to Jehovah's Witnesses; we do not know that they believe any of these things that this gentleman is speaking about. We only know what they testified to on the stand, themselves.

THE COURT: Of course, this Court is not concerned with the validity of the religious beliefs held by these persons; it is only concerned, if at all, with the sin-

cerity of them, and whether they are held by the individuals as religious beliefs. It seems to me this testimony may have some bearing on that question; therefore, I will overrule your motion and grant you an exception.

The plaintiffs then rested.

DEFENDANTS' EVIDENCE.

The defendants produced only one witness, CHARLES EDWARD ROUDABUSH, who, after having been duly sworn, testified that he has been superintendent of schools in Minersville for the past twenty-three years. When his attention was called to the provision in the School Code set forth in 24 Purdon's Statutes, Section 1551, wherein schools in Pennsylvania are required to teach "civics, including loyalty to the State and National Government," and was asked what part the salute to the flag plays in that teaching, the witness testified concerning the same and also demonstrated the salute as used in the school in which the Gobitis children had been pupils.

A. We feel that every citizen and every child in the public schools should have the proper regard for the emblem of the country, the flag. We have never required the salute of the flag, yet everyone in our school system for twenty-three years, and even longer, has given the salute voluntarily, willingly. The salute of the flag, we believe, is a means of helping to inculcate in the children a love for country, the institutions of the country, and for that reason we have expected the salute from the teachers and the children.

Q. Doctor, would you kindly explain to us just exactly what you do in connection with this salute? It has been admitted, practically, in the pleadings, but it might be amplified just a little, if you please.

A. In some of the schools——

Q. Just this school in which were the Gobitis children, exactly what occurred?

A. Sometimes I believe in our school where these children were enrolled they sing the salute, they rise and sing, "I pledge allegiance to my flag and the Republic for which it stands, one nation indivisible, with liberty and justice for all."

Q. Doctor, exactly what is the nature of the salute? Would you mind demonstrating it to us?

A. Standing——

Q. Right hand over the chest?

A. Yes. "I pledge allegiance to my flag——"

Thereafter, the witness testified as follows regarding the effect of the failure or refusal of pupils to salute the flag, the arrangements which were made for those who refused to salute for alleged religious reasons, and the nature and character of the ceremony or exercise.

Q. When you say, "my flag," extending your right hand towards the flag with the palm upraised. Doctor, in your opinion, what is the effect when a few children do not salute the flag and others do, so far as your school system is concerned?

A. It would be demoralizing on the whole group.

Q. Why?

A. The tendency would be to spread. In our mixed population where we have foreigners of every variety, it would be no time until they would form a dislike, a disregard for our flag and country. May I say that the thing that goes hard with us when someone refuses to salute the flag is to refuse to pledge allegiance to the country for which it stands.

Now, I believe when we make a citizen out of an alien the first thing that we require is they have to denounce their allegiance to the foreign country, and it would be reasonable to suppose that they would be required to pledge allegiance to the country in which they want to become citizens.

By The Court:

Q. Just a minute. Is there any arrangement, Doctor, for any children who explain that they refuse to salute the

flag because of religious reasons, to pledge their allegiance separate from the salute?

A. No, we have never made any provisions; we feel it is not a religious exercise in any way and has nothing to do with anybody's religion.

Q. Do you feel that these views to the contrary here held by these two pupils are not sincerely held?

A. I feel that they were indoctrinated.

Q. Do you feel their parents' views were not sincerely held?

A. I believe they are probably sincerely held, but misled; they are perverted views.

Q. I suppose you would say the same thing about a Mohammedan, wouldn't you, or a Hindu?

A. No, that is a whole——

Q. In other words, anyone who didn't agree with your religious views and mine would be indoctrinated, or hold perverted views, because he doesn't believe with you?

A. As I see it, your Honor, I feel that this is not a matter of religion at all, it has nothing to do with religion, and I think the objection taken by the Jehovah's Witnesses is uncalled for.

By Mr. Henderson:

Q. Well, that is something you don't have to get into now, Doctor Roudabush. In the matter of teaching civics and loyalty, do you or do you not have any opinion or feeling with reference to the fact that a sufficient number of students fail to salute the flag, whether or not in time that will lead to any breakdown of government from the standpoint of the safety of the public?

A. I do, I feel so.

Q. Why, Doctor?

A. Take the matter of loyalty to country. If our citizens do not have loyalty to the country——

The Court: You were asked about the salute to the flag.

THE WITNESS: I am coming to that.

MR. HENDERSON: He is coming around to that, where the salute plays its part, I am sure, your Honor.

THE WITNESS: In order to establish this loyalty to country, and things of that nature, I think the salute to the flag does contribute a large part.

By THE COURT:

Q. Is it your daily experience or not that this daily exercise repeated every day tends to become somewhat of a formalistic matter, a matter of form with a lot of children?

A. I believe it does, just the same as going to church, or anything else, I think it would be just the same, some people would regard it that way. But there comes a time when there will be a thinking back to the lessons that were inculcated in the public schools.

By MR. HENDERSON:

Q. Doctor, of course, the flag of the United States is a symbol thereof. Do you or do you not feel that disrespect to the flag is disrespect to the Government, to its institutions and ideals?

A. I do feel it is.

Q. Of course, those who reside within the Commonwealth receive the protection and benefits afforded to them, and, naturally, must obey its laws, and should show due respect to the Government, its institutions and ideals. your opinion, is the failure to salute the flag any disrespe...

A. I think it is; yes, sir.

Q. And, following that, is it——

By THE COURT:

Q. Would you say that if the declination to salute the flag was based on sincere religious grounds that that is disrespect?

A. I can't admit——

Q. Without admitting it, admitting that a misguided person sincerely feels he must weaken his whole religious

conscience to do it, would you say that is disrespect to our flag?

A. I would. I feel he should be put right. They should show the proper reverence of the country and the flag.

Q. Do I understand you to mean the public schools should see their religious beliefs are changed?

A. Try to correct the thing that exists and that is wrong.

By Mr. Henderson:

Q. Doctor, is or is not your opinion that a proper salute of the flag of your country is just part of a patriotic ceremony, an act of respect to the institutions and ideals of the land, and affording a safe place to live in?

A. That is my opinion.

Q. In other words, I gathered from what you stated you did not consider that a religious right is involved at all; that is your opinion?

A. That is my opinion, sir.

By The Court:

Q. What you mean, I suppose, is that it has no religious significance to you; in your mind, it has no religious significance; isn't that really what you mean?

A. Yes.

Q. You are not prepared to get into someone else's mind and to say what is in their mind with respect to it?

A. No.

In concluding this testimony, Dr. Roudabush testified regarding the number and qualifications of parochial schools in the vicinity of Minersville and as to the requirements for non-catholic pupils attending the same.

By Mr. Henderson:

Q. Doctor, are you familiar with the parochial schools around Minersville?

A. I am; yes, sir.

Q. And there are parochial schools there?

A. We have four parochial schools in Minersville furnishing grade education up to and including the eighth grade and in Pottsville four miles away, we have a parochial high school that is equivalent to any in the country.

Q. Doctor, do you know of your own knowledge that they take Protestants in those schools?

A. They do.

MR. MOYLE: May it please the Court, this is all objected to as immaterial and irrelevant.

THE COURT: Objection overruled.

By MR. HENDERSON:

Q. Doctor, are you familiar at all with the expenses of going to those schools?

A. I am not—I couldn't give you the exact figures, but I know that many of them go by just mere subscription, wherever they are able to pay. Many go for nothing.

Q. It is a fact, is it not, that the parochial schools certainly do take in Protestants?

A. Yes.

Q. We all understand that?

A. Yes.

Q. Mr. Gobitis stated he never appealed to any of these parochial schools——

By THE COURT:

Q. Do they have a compulsory flag salute ceremony?

A. Indeed, I am not able to say.

Q. You don't know?

A. I don't know.

MR. HENDERSON: Cross-examine.

Dr. Roudabush then submitted to the following cross-examination.

CROSS-EXAMINATION.

By MR. MOYLE:

Q. You believe, Doctor, in the principles of religious freedom as set forth in the Pennsylvania Constitution?

A. I do, sir.

Q. Do you believe in the statement in that constitution, Section 3, Article 1, that no human authority can in any case control or interfere with the rights of conscience?

A. I do.

Q. Doesn't your regulation flag salute as applied to these two children interfere with their rights and their consciences?

A. They say so.

Q. I am asking you.

A. I don't know, I couldn't answer the question.

Q. You wouldn't say whether it does or does not?

A. No.

Q. If they sincerely believe——

THE COURT: Perhaps it is a legal question as to what those rights are.

MR. MCGURL: That is it, exactly.

THE COURT: I think it is a question of law.

MR. MCGURL: That is where this case will get to, I think, your Honor, that very question.

By MR. MOYLE:

Q. You have set forth in the answer filed by you, Doctor, that the act of saluting the national flag is a necessary and reasonable method of teaching loyalty to the state, and so on. You believe that, do you?

A. Yes, sir.

Q. And it is absolutely necessary to salute the flag in order to teach loyalty?

A. Oh, no, one of the means, it is one of the means of teaching loyalty.

Q. Then you admit that loyalty could be taught——

A. It is taught otherwise.

Q. —without saluting the flag?

MR. MCGURL: We object to that, if your Honor please, because the manner of teaching loyalty, or any

other subject, is within the jurisdiction of the school authorities, and whatever anybody's opinion of teaching it in some other manner might be is another matter.

THE COURT: I understand Mr. Moyle to say it is necessary; is there such an averment?

MR. MOYLE: Yes, that is on page 10 of the answer.

THE COURT: Yes, you do say "necessary."

MR. MCGUIRL: And reasonable, we say.

By THE COURT:

Q. I would imagine, Doctor, that what you really mean, in your opinion, it is an appropriate method?

A. Yes.

Q. But not a necessary method, there are other methods?

A. There are other methods.

Q. You say it is an appropriate method, and you have adopted it?

A. Yes, sir.

By MR. MOYLE:

Q. Then you admit loyalty could be taught without the flag salute, is that right?

A. Yes, sir. I will not admit, though, that we do not have the right to ask——

Q. I understand.

THE COURT: That is a legal question.

MR. HENDERSON: That is the whole point; you required it, and that is the case.

By MR. MOYLE:

Q. Outside of the flag salute issue, there are no other acts of disobedience on the part of these children?

A. None at all, very good children.

Q. You do state that the public welfare and safety involving the citizens would be harmed by reason of the fact

that some of the pupils refuse to salute the flag, even on conscientious grounds, is that right?

A. Yes, sir.

Q. Isn't it a fact, Doctor, that there would be harm to the public welfare and safety by applying that regulation to one who conscientiously objects to it?

A. I cannot admit a conscientious objection.

Q. Just for the sake of argument, you would admit it would be possible, wouldn't you?

A. No, I think there should not be any conscientious objection.

Q. But if there were, Doctor, if one should conscientiously object and he was forced to stifle his conscience and commit this act which he believes morally wrong, wouldn't that be detrimental to the public welfare and safety?

A. May I ask a question?

Q. No, I would like to have you answer my question.

A. As I see it, there is no justification for the objection; therefore, I can't answer your question.

MR. MOYLE: I ask that answer be stricken out, it is not responsive. I would like to have an answer.

THE COURT: He says he cannot answer the question.

MR. MOYLE: All right, that's all.

PLAINTIFFS' EVIDENCE IN REBUTTAL.

In rebuttal, the plaintiffs produced Charles R. Hessler who was sworn, but, after objection based on plaintiffs' offer of proof, the witness was withdrawn without testifying.

Erma Metzger was then called by the plaintiffs and duly sworn, but she too was withdrawn without testifying after objection had been raised based on plaintiffs' offer of proof.

DEFENDANTS' EVIDENCE IN SURREBUTTAL.

In surrebuttal, the defendants recalled Dr. Charles Edward Roudabush, who testified regarding the school books used in the public schools of Minersville. Defendants' evidence in surrebuttal is as follows:

MR. HENDERSON: We have some of the public school books here, and I want to see if any of them play any part. It might be helpful.

There are about three paragraphs in the books that were used at the time in this school, and these books, I understand, are used generally throughout the United States, and I would like to put on the record about three paragraphs.

THE COURT: Put everything on the record that may be material.

MR. HENDERSON: I think this might be helpful to show what the youngsters are taught.

MR. MOYLE: I don't see how that would be helpful at all. They may be taught it in the school where they are now, for all I know. The only issue is the salute to the flag.

MR. HENDERSON: In Civics it shows specifically that every citizen should know how and when to salute the

American Flag, and when to give the pledge. That is what they teach them in Civics. "The Stars and Stripes Forever" are at the top of a page in "Behave Yourself," one of the books they have in the public schools.

THE COURT: You may put on the record what you wish.

MR. HENDERSON: I just want to read, your Honor, from the books. I can put Doctor Roudabush on the stand so this can be part of his testimony, and we will assume he is there, and these books are the ones used in the school.

DOCTOR ROUDABUSH: I will certify to that. Two of them are in the grades the children were in when they left school.

CHARLES EDWARD ROUDABUSH, recalled.

DIRECT EXAMINATION.

By MR. HENDERSON:

Q. As far as "Behave Yourself" is concerned, it was a book in use at that time?

A. Yes, sir.

Q. And they were taught as follows, on page 149, at the top of which are "The Stars and Stripes Forever," being a picture of the American Flag with a young man with his hat off in his right hand and pressing it against his heart:

"Respect and reverence for the American Flag are expected from every decent citizen. It is the symbol of the masses, and any disrespect is a reflection upon the society in which you live. The artificial rules of etiquette that have grown up, and have come to be recognized as the basis for proper recognition of it, all have their foundation in the fact that it is a symbol, that it represents something. It isn't a piece of cloth; it is the Pilgrims at Plymouth Rock, the signers of the Declaration of Independence, the fighters on the frontier, the sol-

diers, sailors, statesmen, the rich and poor; all who have made the United States. And it is not the past alone, or the present. It is the future, whatever the future is to be. The Flag stands for all that we have been, all that we are, all that we are to be."

This book was written by Allen and Briggs. It is the property of the Minersville Public Schools at Minersville.

THE COURT: That really is supporting the plaintiffs' case.

MR. HENDERSON: We have no objection whatever it does.

THE COURT: I mean it is an acknowledgment the Flag is a symbol which they are asked to worship.

MR. HENDERSON: In "Civics Through Problems," by Edmonson, Dondinea, and Little, which is the property of the Minersville School District, reading from page 37, it says:

"In the pledge to the Flag our duty as citizens is defined. In this pledge we swear allegiance to our country. The duties of allegiance requires that the citizen be willing to defend his country in time of war and try to promote its interests at all times. In turn our country is obliged to defend the life, liberty, and property of a citizen at home and abroad. Every citizen should know how and when to salute the American Flag and be able to give the pledge. The pledge was originally written by Francis Bellamy. The first form of the pledge was changed and it is now given in the following way:

I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands; one Nation, indivisible, with liberty and justice for all."

THE COURT: Very well.

MR. HENDERSON: On page 351 of "Easy Road to Reading," in the 6th Grade, which is used in the Public

Schools of Mine sville, by Lyons and Carnahan, we read the followin ;:

"The Law of Loyalty.

The good American is loyal.

If our America is to become ever greater and better, her citizens must be loyal, devotedly faithful, in every relation in life."

And the second one:

"I will be loyal to my school. In loyalty I will obey and help other pupils to obey those rules which further the good of all."

Those are part of the teachings in the particular school to which they have been going.

If your Honor please, I do not know just how you want this record. We would be very glad to furnish your Honor with a request for findings of fact and findings of law, if that is the way in which you would like it.

THE COURT: I think that is the way to do it. I think you will want the testimony transcribed, which will be done shortly, and within a certain period after that I would say counsel for the plaintiffs should have his requests and his brief ready, let us say within fifteen days after the testimony is transcribed, and serve copies on you, and then within fifteen days thereafter you prepare and file yours.

MR. HENDERSON: Yes, sir.

THE COURT: And the plaintiffs have leave after that to file a reply brief, if they wish to do so.

MR. HENDERSON: If your Honor please, at this time I would like to renew my motion to dismiss on the jurisdictional grounds which are set forth at the beginning of the trial and which are set forth in the five different motions the stenographer will copy, plus the amount is not sufficient that is involved.

THE COURT: I will take that under consideration

MR. MOYLE: The understanding, then, is the pla tiffs will file requests for findings and a brief fift days after the testimony is available?

THE COURT: And serve a copy on Mr. Henders and Mr. Henderson will prepare his requests and br and serve a copy on you, and you will advise the Co if you want to file a reply brief. I think you ought get that in five days. You will have fifteen days, fift days, and five days.

MR. HENDERSON: That is satisfactory to us.

It was further agreed by counsel that wherever t name of Dr. A. E. Valibus appears to have been misspel in the answer of the defendants, it will be deemed to ha been correctly spelled.

At the suggestion of the Court, a suggestion was sub quently filed by the attorneys for the defendants that Geo H. Beatty, one of the defendants, died on January 30, 19

We agree that the foregoing contains a true, compl and properly prepared statement under Equity Rule 75 the evidence adduced at the hearing of the above-numbe and entitled cause.

H. M. MCCAUGHEY,
Attorney for Plaintiff
JOHN B. MCGURL,
RAWLE & HENDERSON,
By JOSEPH W. HENDERSON
Attorneys for Defendan

REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW.

(Filed June 18, 1938.)

The issues in this action having come on for trial before the Court on the fifteenth day of February, 1938, the complainants request that the Court enter the folowing as findings of fact and conclusion of law established in said matter.

FINDINGS OF FACT.

1. That the plaintiff Walter Gobitis is a citizen of the United States of America and of the Commonwealth of Pennsylvania, and is a resident of the Borough of Minersville in said Commonwealth of Pennsylvania.

Affirmed. M.

2. That plaintiffs Lillian Gobitis, age thirteen years, and William Gobitis, age twelve years, are children of the said Walter Gobitis and are residents of the Minersville School District of Minersville, Pennsylvania, and have resided there continuously for many years.

Affirmed. M.

3. That the Minersville School District is a public school district embracing the Borough of Minersville, Schuylkill County, Pennsylvania; that the defendants Dr. A. E. Valebus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans, William Zapf and David I. Jones were at the time of the institution of this action the duly elected, qualified and acting Board of Education of such school district, and constitute a body politic and corporate in law, and have the management and control of the Minersville public schools; that David I. Jones is no longer a member of said Board of Education and has been succeeded by Dr. E. W. Keith subsequent to the filing of complainants' bill in equity; that the defendant Charles E.

Roudabush is the superintendent of the Minersville public schools and acts as such under the direction, supervision and order of said Board of Education; that all of the defendants are residents of Minersville, Pennsylvania, and citizens of the Commonwealth of Pennsylvania and of the United States.

Affirmed. M.

4. That the aforesaid Minersville public schools were and are free public schools and are under the supervision and jurisdiction of the said Board of Education.

Affirmed. M.

5. That heretofore, to wit, on the sixth day of November, A. D. 1935, at a regular meeting of the said Board of Education of the Minersville public schools there was adopted and entered on the minutes of such meeting a school regulation in words and figures as follows, to wit:

> "That the Superintendent of the Minersville Public Schools be required to demand that all teachers and pupils of said schools be required to salute the flag of our country as a part of the daily exercises. That refusal to salute the flag shall be regarded as an act of insubordination and shall be dealt with accordingly."

Affirmed. M.

6. That the minor plaintiffs Lillian Gobitis and William Gobitis were placed in the Minersville public school by their father Walter Gobitis at the beginning of the scholastic year 1935-1936 and attended said school until the sixth day of November, 1935.

Affirmed. M.

7. That plaintiffs are members of an unincorporated association of Christian people designated as Jehovah's Witnesses; that each and every one of Jehovah's Witnesses has entered into an agreement or covenant with Jehovah

God, wherein they have consecrated themselves to do His will and to obey His commandments; they accept the Bible as the Word of God, and conscientiously believe that a failure to obey the precepts and commandments laid down therein will in due time result in their eternal destruction. Plaintiffs and all of Jehovah's Witnesses sincerely and honestly believe that the act of saluting a flag contravenes the law of Almighty God in this, to wit:

(a). To salute a flag would be a violation of the Divine commandment stated in verses 4 and 5 of the twentieth chapter of Exodus of the Bible, which reads as follows, to wit:

"Thou shalt have no other gods before me. Thou shalt not make unto thee any graven image, or any likeness of any thing that is in heaven above, or that is in the earth beneath, or that is in the water under the earth; thou shalt not bow down thyself to them, nor serve them . . . ",

in that said salute signifies that the flag is an exalted emblem or image of the government and as such entitled to the respect, honor, devotion, obeisance and reverence of the saluter.

(b) To salute a flag means in effect that the person saluting the flag ascribes salvation and protection to the thing or power which the flag stands for and represents, and that since the flag and the government which it symbolizes are of the world and not of Jehovah God, it is wrong to salute the flag, and to do so denies the supremacy of Almighty God, and contravenes His express command as set forth in Holy Writ.

Affirmed as to plaintiffs. M.

8. Plaintiff Walter Gobitis has at all times endeavored to instruct and inform his said children in the truths set forth in God's Word, the Bible, desiring to educate them

and bring them up as devout and sincere Christian men and women, all as it was his right, privilege and duty so to do; that said children have been so instructed from an early age and are now and have been at all times material hereto sincere believers in the Bible teachings and have faithfully endeavored to obey the commandments of Almighty God as set forth therein.

Affirmed. M.

9. Plaintiffs are American citizens and honor and respect their country and state, and willingly obey its laws, but that they nevertheless believe that their first and highest duty is to their God and His commandments and laws, and that true Christians have no alternative except to obey the Divine commandments and to follow their Christian convictions.

Affirmed. M.

10. That the said Lillian Gobitis and William Gobitis did not and were conscientiously unable to salute the flag because their religious beliefs and manner of worship forbade such salute, and the giving of such salute was in contravention of and in conflict with the commands of Almighty God, as they sincerely believed.

Affirmed. M.

11. That at the meeting of the Board of Education of the Minersville public schools held on November 6, 1935, as aforesaid, and immediately after the passage of the regulation set forth in foregoing paragraph "5." hereof, the defendant Charles E. Roudabush, acting under the direction and authority of said Board of Education aforesaid, publicly announced, "I hereby expel from the Minersville Schools Lillian Gobitis, William Gobitis and Edmund Wasliewski for this act of insubordination, to wit, failure to salute the flag in our school exercises."

Affirmed. M.

12. That the sole reason for the said expulsion and their subsequent inability to attend classes at the said school was the refusal by the said Lillian and William Gobitis to salute the flag as required by the regulation of the Board of Education hereinbefore referred to.

Affirmed. M.

13. That since the sixth day of November, A. D. 1935, the said Lillian Gobitis and William Gobitis, as a result of said order of expulsion, have been unable to attend and have not attended their respective classes in the aforesaid Minersville public schools.

Affirmed. M.

14. That the value of the right for which plaintiffs seek protection, to wit, the right of the minor plaintiffs to obtain an education in the public schools of the Commonwealth of Pennsylvania and in the schools maintained by the Minersville School District is a valuable personal and property right to said plaintiffs, and the denial to them of such right is causing them damage in excess of the sum or value of three thousand ($3000) dollars, exclusive of interest and costs.

Affirmed as to plaintiff Walter Gobitis only. M.

CONCLUSIONS OF LAW.

1. That this Court has jurisdiction of said cause, because it is a suit of a civil nature in equity wherein the controversy exceeds, exclusive of interest and costs, the sum or value of three thousand ($3000) dollars, and arises under the Fourteenth Amendment to the Constitution of the United States.

Affirmed. M.

2. That the regulation of the Board of Education of the Minersville public schools entered on the sixth day of November, 1935, and hereinbefore referred to, is unconsti-

tutional, null and void, as applied to the plaintiffs Lillian Gobitis and William Gobitis, under the due process clause of the Fourteenth Amendment to the Constitution of the United States, for the following reasons, to wit:

(a) It unreasonably restricts the freedom of religious belief and worship and the free exercise thereof, of said plaintiffs.

(b) It unreasonably restricts the freedom of speech of said children by subjecting them to the penalties of dismissal from school and of juvenile delinquency, solely because they are conscientiously unwilling and unable to salute the flag.

(c) It discriminates against children in the public schools by requiring them to salute the flag whereas it does not make such a requirement of the rest of the population, and thereby denies the said Lillian Gobitis and William Gobitis the equal protection of the laws guaranteed them by the Fourteenth Amendment to the Constitution of the United States.

Refused as drawn. M.

3. That the aforesaid regulation is unconstitutional, null and void as applied to the plaintiff Walter Gobitis under the due process clause of the Fourteenth Amendment to the Constitution of the United States, for the following reasons, to wit:

(a) It unreasonably restricts the liberty of Walter Gobitis in his choice and direction that his said children be educated at free public schools.

(b) It unreasonably restricts the liberty of said Walter Gobitis by subjecting him to penalties of prosecution and punishment under the compulsory school attendance laws of the Commonwealth of Pennsylvania, not for his own conduct, but for the conduct of his children in failing to salute the flag.

(c) It unreasonably restricts the liberty of said Walter Gobitis freely to impart to his said children Bible teachings and a manner of worship according to the dictates of his own conscience.

(d) It denies the said Walter Gobitis of the property right to have his children, the said Lillian Gobitis and William Gobitis, educated in the free public schools of the City of Minersville, without charge.

Refused as drawn. M.

4. That the acts and conduct of defendants in excluding the minor plaintiffs from the public schools of Minersville cannot be justified under the police power of the state in that the failure and refusal of said minor plaintiffs to salute the national flag in accordance with the provisions of said regulation could not and did not in any way prejudice or imperil the public safety, health or morals or the property or the personal rights of their fellow citizens.

Affirmed. M.

5. That the plaintiffs have no adequate remedy at law to prevent the injury and damage as aforesaid.

Affirmed. M.

6. That the plaintiffs are entitled to judgment for the relief demanded in the bill in equity.

Affirmed. M.

I THEREFORE DIRECT that judgment be entered as follows, to wit:

1. That the regulation of the Board of Education of the Minersville public schools set out in paragraph "5." of page 2 hereof, as applied to the plaintiffs, be decreed to be null and void as violative of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

2. That the said defendants, and each of them, and all persons acting under their authority and direction be enjoined and restrained from doing the following acts:

(a) From continuing in force the expulsion order expelling said minor plaintiffs from school and prohibiting their attendance at said schools.

(b) From requiring and ordering said minor plaintiffs to salute the flag during the course of the patriotic exercises conducted at said schools, or at any other time while in attendance at said schools.

(c) From in anywise hindering or molesting or interfering with the right of said minor plaintiffs to enjoy full religious freedom in the manner dictated by conscience of their own.

Let judgment be entered accordingly.

Dated April , 1938.

.....

Judge.

DEFENDANTS' REQUESTS FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW.

(Filed April 5, 1938.)

The learned trial Judge in the above-entitled case is respectfully requested by the defendants to make the following findings of fact and conclusions of law:

FINDINGS OF FACT.

1. The plaintiff Walter Gobitis is a citizen of the United States of America and of the Commonwealth of Pennsylvania, and is a resident of the Borough of Minersville in said Commonwealth of Pennsylvania.

Affirmed. M.

2. The plaintiff Lillian Gobitis was born November 2, 1923, and the plaintiff William Gobitis was born September 17, 1925. Each of said plaintiffs are children of the aforesaid Walter Gobitis, citizens of the United States of America, and of the Commonwealth of Pennsylvania, and are residents of the Minersville School District of Minersville and have resided there continuously for many years.

Affirmed. M.

3. The Minersville School District is a public school district embracing the Borough of Minersville, Schuylkill County, Pennsylvania; that the defendants Dr. A. E. Valebus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans, William Zapf and David I. Jones were at the time of the institution of this action the duly elected, qualified and acting Board of Education of such school district, and constitute a body politic and corporate in law, and have the management and control of the Minersville public schools; David I. Jones is no longer a member of said Board of Education and has been succeeded by Dr. E. W. Keith subsequent to the filing of complainants' bill in equity; George H. Beatty is no longer a member of said

Board of Education, having died testate on January 30, 1938; the defendant Charles E. Roudabush is the superintendent of the Minersville public schools and acts as such under the direction, supervision and order of said Board of Education; that all of the defendants now living are residents of Minersville, Pennsylvania, and citizens of the Commonwealth of Pennsylvania and of the United States.

Affirmed. M.

4. The aforesaid Minersville public schools were and are free public schools and are under the supervision and jurisdiction of the said Board of Education.

Affirmed. M.

5. On the sixth day of November, A. D. 1935, at a regular meeting of said Board of Education of the Minersville public schools there was adopted and entered on the minutes of such meeting a school regulation in words and figures as follows, to wit:

> "That the Superintendent of the Minersville Public Schools be required to demand that all teachers and pupils of said schools be required to salute the flag of our country as a part of the daily exercises. That refusal to salute the flag shall be regarded as an act of insubordination and shall be dealt with accordingly."

Affirmed. M.

6. Said regulation provided the reasonable method of teaching "civics, including loyalty to the State and Federal Government" and its adoption was within the authority of the defendant Board of Education.

Refused as drawn. M.

7. Subsequent to the adoption of said regulation and pursuant to the requirements contained therein, it has been and still is the custom and practice of the teachers and pupils of the Minersville public schools at the opening of school to rise, place their right hands on their respective

breasts and to speak the following words: "I pledge allegiance to the flag of the United States of America, and the Republic for which it stands; one nation indivisible, with liberty and justice for all." The teachers and pupils, while the aforesaid words are being spoken, extend their respective right hands so as to salute the flag.

Affirmed. M.

8. The minor plaintiffs Lillian Gobitis and William Gobitis were placed in the Minersville public school by their father Walter Gobitis at the beginning of the scholastic year 1935-1936 and attended said school until the sixth day of November, 1935.

Affirmed. M.

9. The plaintiffs are members of an unincorporated association of Christian people designated as Jehovah's Witnesses; each of the plaintiffs as a member of said group has covenanted with Jehovah God to obey the commandments of God and to preach the gospel of the kingdom as contained in the Bible; the Bible constitutes the creed of each of the plaintiffs.

Affirmed. M.

10. The act of saluting the national flag is not a violation of any of the commandments of God as set forth in the Bible; it is not an act of idolatry or worship of an image in place of God, and has no reference to nor does it affect or concern one's religious beliefs or one's manner of religious worship.

Refused as drawn. M.

11. The act of saluting the national flag is no more than an acknowledgment of the temporal sovereignty of our country and has nothing to do with religion. It is not a religious rite but merely a part of a patriotic ceremony.

Refused as drawn. M.

12. The act of saluting the national flag does not go beyond that which is reasonably due any government.

Refused as drawn. M.

13. The act of saluting the national flag is merely an awakening in the minds of youth of a civic consciousness and of loyalty to government.

Refused as drawn. M.

14. Lillian Gobitis and William Gobitis failed to salute the national flag at daily exercise of Minersville public school.

Affirmed. M.

15. At the meeting of the Board of Education of the Minersville public schools held on November 6, 1935, as aforesaid, and immediately after the passage of said regulation the defendant Charles E. Roudabush, acting under the direction and authority of said Board of Education aforesaid, publicly announced, "I hereby expel from the Minersville schools Lillian Gobitis, William Gobitis and Edmund Wasliewski for this act of insubordination, to wit, failure to salute the flag in our school exercises."

Affirmed. M.

16. Since November 6, 1935, Lillian Gobitis and William Gobitis have not attended their respective classes in the aforesaid Minersville public school.

Affirmed. M.

17. From the last week of December, 1935, to the end of May, 1937 (except for holidays and vacation periods), Lillian Gobitis attended classes in Jones Kingdom School at Andreas, Pennsylvania.

Affirmed. M.

18. From September, 1937, to the date of hearing, to wit, February 15, 1938 (except for holidays and vacations),

Lillian Gobitis attended classes in Pottsville Business College.

Affirmed. M.

19. From the last week of December, 1935, to the day of hearing, to wit, February 15, 1938 (except for holidays and vacations), William Gobitis has attended class in the Jones Kingdom School at Andreas, Pennsylvania, being now in the seventh grade.

Affirmed. M.

20. The Jones Kingdom School at Andreas, Pennsylvania, does not provide education beyond the eighth grade.

Affirmed. M.

21. Neither Walter Gobitis nor his children Lillian Gobitis or William Gobitis have made any attempt to be admitted to classes at any of the four parochial grade schools in Minersville or the parochial high school in Pottsville, Pennsylvania, which is only four miles distant from Minersville.

Affirmed. M.

22. The parochial schools in Minersville and vicinity permit persons of other religious beliefs to attend their institution, many of such persons attending by mere subscription of whatever they are able to pay and many of such persons attending at no cost whatsoever.

Refused. M.

23. Walter Gobitis has not already expended and in all probability will not expend until Lillian Gobitis attains the age of eighteen years the sum of $3000 on account of educating said Lillian Gobitis since her expulsion from the Minersville public schools.

Affirmed. M.

24. Walter Gobitis has not already expended and in all probability will not expend until William Gobitis attains the

age of eighteen years the sum of $3000 on account of educating said William Gobitis since his expulsion from the Minersville public schools.

Affirmed. M.

25. Walter Gobitis has not already expended and in all probability will not expend until William Gobitis and Lillian Gobitis respectively attain the age of eighteen years the sum of $3000 on account of educating the said William Gobitis and Lilllan Gobitis since their expulsion from the Minersville public schools.

Refused. M.

26. The amount in controversy does not exceed the sum of $3000 exclusive of interest and costs.

27. The failure or refusal of Lillian Gobitis and of William Gobitis or of any pupil or group of pupils to salute the national flag was and would be disrespectful to the government of which the flag is a symbol and tends and will tend to promote disrespect for that government and its laws with the result that the public welfare and safety and well-being of the citizens of the United States will be ultimately harmed and seriously affected thereby.

Refused. M.

CONCLUSIONS OF LAW.

1. This Court has no jurisdiction of this suit under subsection 1 of section 24 of the Judicial Code (28 U. S. C. A. sec. 41 (1)) because the matter in controversy does not exceed the sum or value of $3000, exclusive of interest and cost.

Refused. M.

2. This Court has no jurisdiction of this suit under subsection 1 of section 24 of the Judicial Code (28 U. S. C. A. sec. 41 (1)) because the matter in controversy does not arise under the Constitution or laws of the United States.

Refused. M.

3. This Court has no jurisdiction of this suit under subsection 14 of section 24 under the Judicial Code (28 U. S. C. A. sec. 41 (1)) because the plaintiffs have not been deprived of any right, privilege or immunity secured to them by the Constitution of the United States or of any right secured by any law of the United States.

Affirmed. M.

4. The plaintiffs have failed to establish cause of action entitling them to the relief sought in their bill of complaint.

Refused. M.

5. The Board of Education of Minersville School District had the authority to adopt reasonable regulations regarding the conduct and studies of pupils in its school district and to expel pupils, such as the minor plaintiffs, for refusal to obey such regulations.

Affirmed. M.

6. The resolution requiring pupils to salute the national flag as a part of the daily exercises of the school is reasonable.

Refused as drawn. M.

7. The enforcement of said regulation would not violate any right, privilege or immunity secured to the plaintiffs under the Constitution of the United States.

Affirmed. M.

8. The enforcement of said regulation would not violate any right, privilege or immunity secured to the plaintiffs under the Constitution of the Commonwealth of Pennsylvania.

Refused. M.

9. The attendance at public schools in the Commonwealth of Pennsylvania is a privilege or advantage which is to be enjoyed by its citizens subject to reasonable conditions and restrictions imposed by the legislature through the

local boards of education, and in this case through the Board of Education of Minersville School District. It is not a right entitling the plaintiffs to the relief sought in their bill of complaint.

Refused. M.

10. Plaintiffs' bill of complaint should be dismissed with reasonable costs and charges to be borne by plaintiffs.

Refused. M.

Respectfully submitted,

JOHN B. MCGURL,
RAWLE & HENDERSON,
JOSEPH W. HENDERSON,
GEORGE M. BRODHEAD, JR.,
Attorneys for Defendants.

OPINION

Sur Pleadings and Proofs.

(Filed June 18, 1938.)

June 18, 1938.

MARIS, *J.*

This suit in equity was brought to enjoin the individual defendants from continuing to prohibit the attendance of the minor plaintiffs at the Minersville Public Schools because of their refusal to salute the national flag as required by the defendants. From the evidence I make the following

Special Findings of Fact.

Plaintiff Walter Gobitis is a citizen of the United States and of the Commonwealth of Pennsylvania and is a resident of the Borough of Minersville, Schuylkill County, Pennsylvania. Plaintiffs Lillian Gobitis (hereinafter called Lillian) and William Gobitis (hereinafter called William), are his children. Lillian was born November 2, 1923 and is now

fifteen years of age. William was born September 17, 1925 and is now thirteen years of age. Both of them are citizens of the United States and of the Commonwealth of Pennsylvania and reside with their parents in the Borough of Minersville where they have lived for many years.

The Minersville School District is a public school district of the Commonwealth of Pennsylvania embracing the territory of the Borough of Minersville. The individual defendants David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans and William Zapf were at the time this suit was brought the duly elected and acting members of the Board of Education (hereinafter called the Board) of the Minersville School District, having the management and control of the Minersville Public Schools. David I. Jones is no longer a member of the Board, having been succeeded by Dr. E. W. Keith. George Beatty is no longer a member of the Board having died January 30, 1938. Defendant Charles E. Roudabush is the superintendent of the Minersville Public Schools appointed by and acting under the direction and supervision of the Board. All of the surviving defendants are residents of the Borough of Minersville and citizens of the Commonwealth of Pennsylvania and of the United States.

The Minersville Public Schools were and are free public schools under the supervision and jurisdiction of the Board. William and Lillian were placed in the Minersville Public School by their father, Walter Gobitis, at the beginning of the school year 1935-1936 and attended the school until November 6, 1935.

On November 6, 1935 at a regular meeting of the Board the following school regulation was adopted:

> "That the Superintendent of the Minersville Public Schools be required to demand that all teachers and pupils of said schools be required to salute the flag of our country as a part of the daily exercises. That refusal to salute the flag shall be regarded as an act of insubordination and shall be dealt with accordingly."

Lillian and William having failed to salute the national flag at the daily exercises of the Minersville Public School, defendant Charles E. Roudabush on November 6, 1935 at the direction of the Board and immediately after the adoption of the regulation above quoted, publicly announced: "I hereby expel from the Minersville Schools Lillian Gobitis, William Gobitis and Edmund Wasliewski for this act of insubordination, to wit, failure to salute the flag in our school exercises." Since that date Lillian and William have not been permitted to attend the Minersville Public School.

Lillian and William and their father, Walter Gobitis, are members of an association of Christian people calling themselves Jehovah's Witnesses. Each of the plaintiffs as a member of that association has covenanted with Jehovah God to do His will and to obey His commandments. They accept the Bible as the word of God and conscientiously believe that a failure to obey the precepts and commandments laid down therein will in due time result in their eternal destruction. Each of the three plaintiffs sincerely and honestly believes that the act of saluting a flag contravenes the law of God because (a) it is a violation of the Divine commandment stated in verses 3, 4 and 5 of the twentieth chapter of the Biblical book of Exodus that "Thou shalt have no other gods before me. Thou shalt not make unto thee any graven image, or any likeness of any thing that is in heaven above, or that is in the earth beneath, or that is in the water under the earth; Thou shalt not bow down thyself to them, nor serve them . . ." in that such a salute signifies that the flag is an exalted emblem or image of the Government and as such entitled to the respect, honor, devotion, obeisance and reverence of the salutor, and (b) it means in effect that the person saluting the flag ascribes salvation and protection to the thing or power which the flag stands for and represents, and that, since the flag and the Government which it symbolizes are of the world and not of Jehovah God, it is wrong to salute the flag and to do so denies the supremacy of Almighty God, and contravenes his express command as set forth in Holy Writ.

The refusal of Lillian and William to salute the flag in the Minersville Public School was based solely upon their sincerely held religious convictions that the act was forbidden by the express command of God as set forth in the Bible. Both they and their father, Walter Gobitis, are loyal American citizens who honor and respect their state and country and who are willing and ready to obey all its laws which do not conflict with what they sincerely believe to be the higher commandments of God. Their refusal to salute the flag was not intended by them to be disrespectful to the Government and it did not promote disrespect for the Government and its laws nor endanger the public safety, health or morals or the property or personal rights of their fellow citizens.

The enforcement of defendants' regulation requiring the flag salute by children who are sincerely opposed to it upon conscientious religious grounds is not a reasonable method of teaching civics, including loyalty to the State and Federal Government, but tends to have the contrary effect upon such children.

From the last week of December, 1935 to the end of May, 1937 (except for holidays and vacation periods) Lillian attended the Jones Kingdom School at Andreas, Pennsylvania, and from September, 1937 to the date of hearing, February 15, 1938 (except for holidays and vacation), she attended the Pottsville Business College. From the last week of December, 1935 to the date of hearing, February 15, 1938 (except for holidays and vacation periods), William attended the said Jones Kingdom School. Both the Jones Kingdom School and the Pottsville Business College are private schools whose patrons are required to pay for the tuition of the children attending them.

Up to the present time Walter Gobitis has expended for the education of Lillian since November 6, 1935 a sum in excess of $600 and he will be required to expend for her education in the future during the period she is required by the Pennsylvania School Code to remain in school a sum not

less than $600, or $1,200 in all. Up to the present time Walter Gobitis has expended for the education of William since November 6, 1935 a sum in excess of $800 and he will be required to expend for his education in the future during the period he is required by the Pennsylvania School Code to remain in school a sum not less than $1,200, or $2,000 in all.

Discussion.

This suit has been brought to restrain the enforcement against the minor defendants of a school regulation requiring a daily salute to the flag. It is based upon the ground that the enforcement of this regulation as a condition of the exercise of their right to attend the public schools, infringed the liberty of conscience guaranteed them by the Fourteenth Amendment to the Federal Constitution.

The important legal questions which the case raises were fully discussed in our opinion denying the defendants' motion to dismiss the bill. 21 F. Supp. 581. We there held that the liberty guaranteed by the Fourteenth Amendment includes liberty to entertain any religious belief and to do or refrain from doing any act on conscientious grounds, which does not prejudice the safety, health, morals, property or personal rights of the people. We further held that the minor plaintiffs have a right to attend the public schools and that to require them, as a condition of the exercise of that right, to participate in a ceremony which runs counter to religious convictions sincerely held by them, would violate the Pennsylvania Constitution and infringe the liberty guaranteed them by the Fourteenth Amendment, unless it should appear that the public safety, health or morals or the property or personal rights of their fellow citizens would be prejudiced by their refusal to participate.

The facts as I have found them sustain the allegations of the bill. No one who heard the testimony of the plaintiffs and observed their demeanor upon the witness stand could have failed to be impressed with the earnestness and sincerity of their convictions. While the salute to our na-

tional flag has no religious significance to me and while I find it difficult to understand the plaintiffs' point of view, I am nevertheless entirely satisfied that they sincerely believe that the act does have a deep religious meaning and is an act of worship which they can conscientiously render to God alone. Under these circumstances it is not for this court to say that since the act has no religious significance to us it can have no such significance to them. As we said in our former opinion (21 F. Supp. 584), under our Constitutional principles "If an individual sincerely bases his acts or refusals to act on religious grounds they must be accepted as such and may only be interfered with if it becomes necessary to do so in connection with the exercise of the police power, that is, if it appears that the public safety, health or morals or property or personal rights will be prejudiced by them. To permit public officers to determine whether the views of individuals sincerely held and their acts sincerely undertaken on religious grounds are in fact based on convictions religious in character would be to sound the death knell of religious liberty."

I think it is also clear from the evidence that the refusal of these two earnest Christian children to salute the flag cannot even remotely prejudice or imperil the safety, health, morals, property or personal rights of their fellows. While I cannot agree with them I nevertheless cannot but admit that they exhibit sincerity of conviction and devotion to principle in the face of opposition of a piece with that which brought our pioneer ancestors across the sea to seek liberty of conscience in a new land. Upon such a foundation of religious freedom our Commonwealth and Nation were built. We need only glance at the current world scene to realize that the preservation of individual liberty is more important today than ever it was in the past. The safety of our nation largely depends upon the extent to which we foster in each individual citizen that sturdy independence of thought and action which is essential in a democracy. The loyalty of our people is to be judged not so much by their

words as by the part they play in the body politic. Our country's safety surely does not depend upon the totalitarian idea of forcing all citizens into one common mold of thinking and acting or requiring them to render a lip service of loyalty in a manner which conflicts with their sincere religious convictions. Such a doctrine seems to me utterly alien to the genius and spirit of our nation and destructive of that personal liberty of which our flag itself is the symbol.

It follows that the regulation in question, however, valid and reasonable it may be when applied to others, cannot constitutionally be applied to the plaintiffs as a condition of the right of Lillian and William to attend the public schools and of their father to have them do so.

A question of jurisdiction remains to be considered. In our former opinion we held that the case is one arising under the Constitution of the United States of which this court has jurisdiction under subdivision (1) of Section 24 of the Judicial Code if the matter in controversy exceeds the sum or value of $3,000. The bill contained a clear averment that the jurisdictional amount was involved. This, however, was contraverted by the answer. The amount involved is to be measured by the value of the right to be protected. In this case the right involved is the right to attend the public schools and its value may be measured by the cost of obtaining an equivalent education at private institutions. I have found that cost in the case of Lillian to be $1,200 and in the case of William to be $2,000.

The defendants urge that the rights of Lillian and William are separate rights, the value of which must be separately considered for jurisdictional purposes, and since neither reaches $3,000 the jurisdictional amount is not involved and the bill must be dismissed. The defendants, however, overlook the fact that the obligation to provide for the education of these two children rests upon their father, the plaintiff Walter Gobitis, who is a proper party to the suit, since his right to have his children educated in the public school is also affected. Furthermore he is re-

quired by Section 1414 of the Pennsylvania School Code as amended (24 P. S. Pa. § 1421), to send his children to school, and under Section 1423 (24 P. S. Pa. § 1430) is guilty of a misdemeanor if he fails to comply with the provisions of the act regarding compulsory school attendance. The amount involved in the suit, so far as he is concerned is, therefore, $1,200 plus $2,000. These amounts he may aggregate for the purpose of determining jurisdiction. Kimel v. Missouri State Life Ins. Co., 71 F. (2d) 921. This court, therefore, has jurisdiction of the bill as to him and consequently as to the minor plaintiffs also. Grosjean v. American Press Co., 297 U. S. 233.

I accordingly reach the following

Conclusions of Law.

This court has jurisdiction of the suit.

The regulation adopted by the defendants on November 6, 1935, as applied to the minor plaintiffs as a condition of their right to attend the Minersville Public Schools, deprives the plaintiffs of their liberty without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

The plaintiffs are entitled to an injunction against the defendants restraining them from continuing in force the order expelling the minor plaintiffs from the Minersville Public School and prohibiting their attendance at said school and from requiring the minor plaintiffs to salute the national flag as a condition of their right to attend the said school.

A decree may be entered in accordance with this opinion.

DECREE.

(Filed July 11, 1938.)

This cause coming on to be heard before the Honorable Albert Branson Maris, holding the United States District Court for the Eastern District of Pennsylvania, upon the pleadings and proof on file, and all stipulations and arguments of counsel thereon.

From the consideration of all of which thereof it is on this eleventh day of July, A. D. 1938

Adjudged, Ordered and Decreed:

1. That the matter in dispute in this cause, exclusive of interest and costs, exceeds the sum or value of three thousand ($3000) dollars.

2. That the regulation of the Board of Education of the Minersville Public Schools adopted on the sixth day of November, A. D., 1935, which said regulation is in words and figures as follows, to wit:

> "That the Superintendent of the Minersville Public Schools be required to demand that all teachers and pupils of said schools be required to salute the flag of our country as a part of the daily exercises. That refusal to salute the flag shall be regarded as an act of insubordination and shall be dealt with accordingly."

as applied to the minor complainants as a condition of their right to attend the Minersville Public Schools is null and void in that it deprives them of liberty without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

3. That the defendants, Minersville School District; Board of Education of Minersville School District, consisting of David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans and William Zapf, and Charles E. Roudabush, Superintendent

of Minersville Public Schools, their agents, servants, officers and attorneys, and each of them be, and they hereby are perpetually enjoined and restrained from

(a) continuing in force the order expelling the said minor complainants from the Minersville Public Schools and from prohibiting their attendance at said schools;

(b) requiring said minor complainants to salute the national flag as a condition of their right to attend said schools.

4. That the defendants, Minersville School District: Board of Education of Minersville School District, consisting of David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans and William Zapf, and Charles E. Roudabush, Superintendent of Minersville Public Schools, pay all the costs of this cause, for which execution will issue.

Dated and entered this eleventh day of July, A. D. 1938.

MARIS, *J.*

STIPULATION.

(Filed August 9, 1938.)

And now, to wit, this ninth day of August, 1938, it stipulated and agreed by and between Harry M. M Caughey, Esq., attorney for plaintiffs, and John B. McGu Esq., and Rawle & Henderson, Esqs., attorneys for defen ants, that the above-entitled proceedings in equity be d continued as to George Beatty, one of the defendants in t above-entitled case.

H. M. McCaughey,
Attorney for Plaintiffs.
John B. McGurl,
Rawle & Henderson,
By Joseph W. Henderson,
Attorneys for Defendan

Approved:

Maris, *J.*

PRÆCIPE TO MARK CASE DISCONTINUED AS T GEORGE BEATTY, ONE OF THE DEFENDANTS.

(Filed August 9, 1938.)

To the Clerk:

Kindly mark the above-entitled proceedings in equ discontinued as to George Beatty, one of the defendants the above-entitled case, in accordance with the stipulati approved by the Court and filed of record.

H. M. McCaughey,
Attorney for Plaintiffs.
John B. McGurl,
Rawle & Henderson,
By Joseph W. Henderson,
Attorneys for Defendan

PETITION FOR APPEAL.

(Filed August 9, 1938.)

And now, to wit, this ninth day of August, A. D. 1938, Minersville School District, Board of Education of Minersville School District, David I. Jones, Dr. A. E. Valibus, Claude L. Price, Dr. T. J. McGurl, Thomas B. Evans and William Zapf and Charles E. Roudabush, superintendent of Minersville public schools, considering themselves aggrieved by the decree made and entered hereon on the eleventh day of July, A. D. 1938, in the above-entitled cause, do hereby appeal from said decree and the provisions thereof to the United States Circuit Court of Appeals for the Third Circuit for the reasons specified in the assignments of error which are filed simultaneously herewith, and they pray that this appeal and review may be allowed, and that a transcript of the record, papers and proceedings upon which such order was made, and duly authenticated, may be sent to the United States Circuit Court of Appeals for the Third Circuit.

And your petitioners desire that said appeal shall operate as a supersedeas, and therefore pray that an order be made fixing the amount of security which your petitioners shall give and furnish upon such an appeal, and that, upon giving bond in an amount to be fixed by this Court, the said appeal may operate as a supersedeas and may suspend during the pendency of said appeal the effect of any injunction.

JOHN B. MCGURL,
RAWLE & HENDERSON,
By JOSEPH W. HENDERSON,
Attorneys for Defendants.

August 9, 1938.

ORDER ALLOWING APPEAL.

(Filed August 9, 1938.)

And now, to wit, this ninth day of August, A. D. 1938, it is ordered that an appeal be allowed as prayed for; and it is further ordered that said appeal shall operate as a supersedeas of the decree made and entered in the above-entitled cause and shall suspend and stay all further proceedings in this court, including any injunction until the termination of said appeal by the United States Circuit Court of Appeals for the Third Circuit upon bond being filed in the amount of $250.

By THE COURT,

MARIS,
J.

ASSIGNMENTS OF ERROR.

(Filed August 9, 1938.)

And now come Minersville School District, Board of Education of Minersville School District, David I. Jones, Dr. A. E. Valibus, Claude L. Price, Dr. T. J. McGurl, Thomas B. Evans and William Zapf and Charles E. Roudabush, superintendent of Minersville public schools, petitioners, and file the following assignments of error on appeal from the decree of this Court, dated July 11, 1938:

1 The learned Court erred in denying defendants' motion to dismiss, to wit:

> "Now come Minersville School District: Board of Education of Minersville School District, consisting of David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans and William Zapf, and Charles E. Roudabush, Superintendent of Minersville Public Schools, defendants, by

their attorneys John G. McGurl, Esquire, and Rawle & Henderson, Esquires, and move the Court to dismiss the bill of complaint filed in the above entitled case upon grounds and reasons therefor as follows:

1. The matters set forth in plaintiffs' bill of complaint do not involve a dispute or controversy within the jurisdiction of this Court.

2. The plaintiffs failed to allege any facts which specifically or inferentially substantiate plaintiffs' allegation that the matter complained of is causing them damage in excess of the sum or value of $3000.00 exclusive of interest and costs.

3. Under the facts set forth in plaintiffs' bill of complaint, the plaintiffs' suit does not involve a controversy arising under the Constitution of the United States.

4. Under the facts set forth in plaintiffs' bill of complaint, the plaintiffs have not been deprived of any right, privilege or immunity secured by the Constitution of the United States.

5. The bill of complaint fails to set forth a good cause of action or to entitle the plaintiffs to the relief prayed for.

6. The alleged rights for which the plaintiffs seek protection are not such rights as entitle them to the relief sought.

7. The bill of complaint fails to show that the plaintiffs have sustained or in the future are likely to sustain any loss, damage or injury for which the defendants are liable either at law or in equity.

8. Under the Constitution of the United States and under the Constitution and laws of the State of Pennsylvania the defendants have full power and authority

to adopt the regulation complained of and to enforce its provisions as set forth in the bill of complaint.

Therefore the defendants and each of them respectively move the Court to dismiss the bill of complaint with their reasonable costs and charges on their behalf most wrongfully sustained."

. . . . . .

"MARIS, *J.*

. . . . . .

The motion to dismiss the bill is denied."

2. The learned Court erred in denying defendants' motion to dismiss, which motion was made at the commencement of the hearing in the above case, to wit:

"MR. HENDERSON: May it please the Court, this matter was first brought before you on a bill in equity filed by the complainants, and then a motion to dismiss filed by the school board, the Minersville School District. Your Honor has ruled upon that and is familiar with the matter.

Since that time we have filed an answer. I now, therefore, wish to file a further motion to dismiss the Bill of Complaint, and if Your Honor desires, I want to set forth the same motion that I did with reference to the motion to dismiss before we filed an answer, and for the purpose of the record it may appear, and I can just ask the Stenographer to copy it.

THE COURT: Very well.

MR. HENDERSON: Exactly the same motion that we filed before, a motion to dismiss.

THE COURT: You may submit it to the Stenographer.

MR. HENDERSON: From 2 to 6 inclusive, which are exactly the same ones that are in the record already.

'MOTION TO DISMISS BILL OF COMPLAINT.

Now come Minersville School District: Board of Education of Minersville School District, consisting of David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans and William Zapf, and Charles E. Roudabush, Superintendent of Minersville Public Schools, defendants, by their attorneys John B. McGurl, Esquire, and Rawle & Henderson, Esquires, and move the Court to dismiss the bill of complaint filed in the above entitled case upon grounds and reasons therefor as follows:

1. . . .

2. The plaintiffs failed to allege any facts which specifically or inferentially substantiate plaintiffs' allegation that the matter complained of is causing them damage in excess of the sum or value of $3000.00 exclusive of interest and costs.

3. Under the facts set forth in plaintiffs' bill of complaint, the plaintiffs' suit does not involve a controversy arising under the Constitution of the United States.

4. Under the facts set forth in plaintiffs' bill of complaint, the plaintiffs have not been deprived of any right, privilege or immunity secured by the Constitution of the United States.

5. The bill of complaint fails to set forth a good cause of action or to entitle the plaintiffs to the relief prayed for.

6. The alleged rights for which the plaintiffs seek protection are not such rights as entitle them to the relief sought.'

MR. HENDERSON: Therefore, if Your Honor please, we object to the taking of any testimony in this case upon the ground set forth in these motions.

THE COURT: For the reasons set forth in the opinion of the Court heretofore filed, the motion to dismiss is overruled, with an exception to the defendants."

3. The learned Court erred in permitting the plaintiff, Walter Gobitis, to testify what it cost him to run his car per mile, to wit:

"Q. Do you know what it costs you a mile to run your car?

A. Yes, sir.

MR. HENDERSON: Now, if Your Honor please, I object to this, I think it is purely conjectural. There is nothing definite upon which to base it. He even says during part of this time in the winter he never even made any trips, there were some weeks he didn't even go at all. He doesn't pick up and go every time he wants to see his children; if he does, I don't think it can be put on the school district.

MR. MOYLE: It isn't being put on the school district.

MR. HENDERSON: It is a basis for the damage, which arrives at the same conclusion.

THE COURT: I will overrule the objection.

MR. HENDERSON: Will Your Honor grant me an exception?

THE COURT: Exception to the defendants."

4. The learned Court erred in admitting into evidence Plaintiffs' Exhibit "E," "F" and "G," regarding expenses at Pottsville Business College, to wit:

MR. HENDERSON: Have you offered these bills in evidence?

MR. MOYLE: I will.

MR. HENDERSON: I am going to object to them.

THE COURT: On what ground?

MR. HENDERSON: Upon the ground they sent the daughter to business school, and that there are other schools available in that community. There is no evidence they have tried to send the child to any other school, and I don't think the expense of sending her to this business college is a proper item.

THE COURT: I don't understand that. They were expelled from the public schools.

MR. HENDERSON: Only one, but there are plenty of schools in that adjacent country around there.

THE COURT: They were private schools as to them; in other words, if they were sent to some other school they would have to pay tuition.

MR. HENDERSON: But they wouldn't have to pay this.

THE COURT: Objection overruled, exception for the defendant."

5. The learned Court erred in overruling defendants' motion that bill be dismissed on the ground that they had not established the required jurisdictional amount, to wit:

"MR. HENDERSON: That's all. If your Honor please, at this time I assume that my friends have nothing further to show on the matter of damage, and the jurisdictional question in order to get into this Court, and I move that the bill be dismissed on the ground that they have not shown the jurisdictional amount as required.

THE COURT: I don't know whether they have or not.

MR. HENDERSON: I have computed it, and I find it comes quite far short.

THE COURT: Well, I will overrule the motion for the present.

MR. HENDERSON: Will your Honor grant me an exception?

THE COURT: Yes, exception.

MR. HENDERSON: At this stage?

THE COURT: Yes."

6. The learned Court erred in overruling defendants' objection to the offer of proof regarding testimony of Frederick William Franz, to wit:

"MR. HENDERSON: If your Honor please, may I ask for an offer of proof in connection with this witness?

MR. MOYLE: May it please the Court, through this witness I hope to prove, or offer to prove that he is one of Jehovah's Witnesses, that he has been one of Jehovah's Witnesses for many years and is thoroughly acquainted with the principles and teachings of Jehovah's Witnesses, especially concerning the salute to the flag, and concerning consecration to the Lord, and their obligation to obey His law, and such matters. Those matters are alleged in our bill and are denied by the defense.

MR. HENDERSON: If your Honor please, I object to it as immaterial. It is the belief of the Gobitas' and not this gentlemen.

THE COURT: Yes, they are members of the group. they have expressed their views. I don't know just what your position is, if your view is they don't hold these beliefs, that may be one thing. It may be immaterial. If, however, you concede that the views expressed by the witnesses are the religious beliefs——

MR. HENDERSON: There was some noise, I didn't hear.

THE COURT: I say if the defendants concede that the views which the plaintiffs have expressed on the stand are the religious beliefs that they hold, then I should say this is immaterial.

MR. HENDERSON: If your Honor please, of course, I am not in a position to concede anything in that connection. I think it is their belief, and it is not for me to state what their belief is, that is a question of fact. This has nothing to do with it.

MR. MOYLE: It would be only explanatory, I suppose.

THE COURT: Will you make your offer a little more fully, Mr. Moyle? Just what is it you are proposing to prove?

MR. MOYLE: We expect to show definitely through this witness that the law of God does prohibit a salute to the flag, that Jehovah's Witnesses as a group of the Christian Church are definitely bound by that law and must obey it, that refusal to so obey it would result in eternal destruction, and that is a belief which Jehovah's Witnesses hold and sincerely maintain. I think we alleged that quite clearly in our bill. It is corroborative of the testimony offered by the complainants.

MR. HENDERSON: If your Honor please, I object to the offer.

THE COURT: It may go to the question of the sincerity of the religious beliefs which these people alleged that they hold. I will permit the testimony.

MR. HENDERSON: And grant me an exception?

THE COURT: Exception."

7. The learned Court erred in overruling defendants' motion to strike out the testimony of Frederick William Franz, to wit:

"MR. HENDERSON: If your Honor please, I now wish to renew my motion to strike out the testimony of this witness as immaterial in connection with this case. It is based, of course, upon opinion, and it has no par-

ticular bearing, so far as I can see it, in the case. The plaintiffs are the Gobitas'; if there is any religious belief that is involved, it is their religious belief. They belong to Jehovah's Witnesses; we do not know that they believe any of these things that this gentleman is speaking about. We only know what they testified to on the stand, themselves.

THE COURT: Of course, this Court is not concerned with the validity of the religious beliefs held by these persons; it is only concerned, if at all, with the sincerity of them, and whether they are held by the individuals as religious beliefs. It seems to me this testimony may have some bearing on that question; therefore, I will overrule your motion and grant you an exception."

8. The learned Court erred in making the following finding of fact, to wit:

"They" (the plaintiffs) ". . . conscientiously believe that a failure to obey the precepts and Commandments laid down therein" (referring to the Bible) "will in due time result in their eternal destruction."

9. The learned Court erred in making the following finding of fact, to wit:

"Both they and their father, Walter Gobitis, are loyal American citizens who honor and respect their state and country and who are willing and ready to obey all its laws which do not conflict with what they sincerely believe to be the higher commandments of God. Their refusal to salute the flag was not intended by them to be disrespectful to the Government and it did not promote disrespect for the Government and its laws nor endanger the public safety, health or morals or the property or personal rights of their fellow citizens"

and in refusing the defendants' twenty-seventh request for finding of fact, to wit:

"27. The failure or refusal of Lillian Gobitis and of William Gobitis or of any pupil or group of pupils to salute the national flag was and would be disrespectful to the government of which the flag is a symbol and tends and will tend to promote disrespect for that government and its laws with the result that the public welfare and safety and well being of the citizens of the United States will be ultimately harmed and seriously affected thereby."

10. The learned Court erred in making the following finding of fact, to wit:

"The enforcement of defendants' regulation requiring the flag salute by children who are sincerely opposed to it upon conscientious religious grounds is not a reasonable method of teaching civics, including loyalty to the State and Federal Government, but tends to have the contrary effect upon such children."

and in refusing the defendants' sixth request for finding of fact, to wit:

"6. Said regulation provided the reasonable method of teaching 'civics, including loyalty to the State and Federal Government' and its adoption was within the authority of the defendant Board of Education."

and in refusing the defendants' fifth and sixth requests for conclusions of law, to wit:

"5. The Board of Education of Minersville School District had the authority to adopt reasonable regulations regarding the conduct and studies of pupils in its school district and to expel pupils, such as the minor plaintiffs, for refusal to obey such regulations.

6. The resolution requiring pupils to salute the national flag as a part of the daily exercises of the school is reasonable."

11. The learned Court erred in making the following finding of fact, to wit:

> "Up to the present time Walter Gobitis has expended for the education of Lillian since November 6, 1935 a sum in excess of $600 and he will be required to expend for her education in the future during the period she is required by the Pennsylvania School Code to remain in school a sum not less than $600 or $1,200 in all. Up to the present time, Walter Gobitis has expended for the education of William since November 6, 1935, a sum in excess of $800 and he will be required to expend for his education in the future during the period he is required by the Pennsylvania School Code to remain in school a sum not less than $1,200, about $2,000 in all."

and in refusing defendants' twenty-fifth request for finding of fact, to wit:

> "25. Walter Gobitis has not already expended and in all probability will not expend until William Gobitis and Lillian Gobitis respectively attain the age of 18 years the sum of $3000.00 on account of educating the said William Gobitis and Lillian Gobitis since their expulsion from the Minersville Public Schools."

12. The learned Court erred in holding in its opinion sur motion to dismiss that the plaintiffs had stated a good cause of action and in holding in its opinion sur bill, answer and proofs that the facts in this case are still governed by its opinion sur motion to dismiss, to wit:

> "The important legal questions which the case raises were fully discussed in our opinion, denying the defendants' motion to dismiss the bill. (21 F. Sup. 581)."

13. The learned Court erred in holding as follows:

> "I think it is also clear from the evidence that the refusal of these two earnest Christian children to salute

the flag cannot even remotely prejudice or imperil the safety, health, morals, property or personal rights of their fellows."

14. The learned Court erred in holding as follows:

"It follows that the regulation in question, however, valid and reasonable it may be when applied to others, cannot constitutionally be applied to the plaintiffs as a condition of the right of Lillian and William to attend the public schools and of their father to have them do so."

15. The learned Court erred in holding as follows:

"Under these circumstances it is not for this court to say that since the act has no religious significance to us it can have no such significance to them."

and in refusing defendants' requests for findings of fact Nos. 10 to 13, inclusive, to wit:

"10. The act of saluting the national flag is not a violation of any of the commandments of God as set forth in the Bible; it is not an act of idolatry or worship of an image in place of God, and has no reference to nor does it affect or concern one's religious beliefs or one's manner of religious worship.

11. The act of saluting the national flag is no more than an acknowledgment of the temporal sovereignty of our country and has nothing to do with religion. It is not a religious rite but merely a part of a patriotic ceremony.

12. The act of saluting the national flag does not go beyond that which is reasonably due any government.

13. The act of saluting the national flag is merely an awakening in the minds of youth of a civic consciousness and of loyalty to government."

16. The Court erred in holding as follows:

"The amount involved in the suit, so far as he i concerned is, therefore, $1,200 plus $2,000. Thes amounts he" (the father—plaintiff) "may aggregat for the purpose of determining jurisdiction."

and in refusing defendants' twenty-sixth request for findin of fact, to wit:

"26. The amount in controversy does not exce the sum of $3000.00 exclusive of interest and costs."

17. The learned Court erred in refusing the defendants seventh request for finding of fact, to wit:

"7. Subsequent to the adoption of said regulatio and pursuant to the requirements contained therein, i has been and still is the custom and practice of th teachers and pupils of the Minersville Public School at the opening of school to rise, place their right hand on their respective breasts and to speak the followin words: 'I pledge allegiance to the flag of the Unite States of America, and the Republic for which i stands; one nation indivisible, with liberty and justic for all'. The teachers and pupils, while the aforesai words are being spoken, extend their respective righ hands so as to salute the flag."

18. The learned Court erred in refusing the defend ants' twenty-first request for finding of fact, to wit:

"21. Neither Walter Gobitis nor his children Li lian Gobitis or William Gobitis have made any attemp to be admitted to classes at any of the four parochia grade schools in Minersville or the parochial hig school in Pottsville, Pennsylvania, which is only fou miles distant from Minersville."

19. The learned Court erred in refusing the defend ants' twenty-second request for finding of fact, to wit:

"22. The parochial schools in Minersville and vicinity permit persons of other religious beliefs to attend their institution, many of such persons attending by mere subscription of whatever they are able to pay and many of such persons attending at no cost whatsoever."

20. The learned Court erred in making the following conclusion of law, to wit:

"This Court has jurisdiction of the suit."

and in refusing defendants' first request for conclusion of law, to wit:

"1. This Court has no jurisdiction of this suit under subsection 1 of section 24 of the Judicial Code (28 U. S. C. A. sec. 41 (1)) because the matter in controversy does not exceed the sum or value of $3000.00, exclusive of interest and cost."

21. The learned Court erred in making the following conclusion of law, to wit:

"This Court has jurisdiction of the suit."

and in refusing defendants' second request for conclusion of law, to wit:

"2. This Court has no jurisdiction of this suit under subsection 1 of section 24 of the Judicial Code (28 U. S. C. A. sec. 41 (1)) because the matter in controversy does not arise under the Constitution or laws of the United States."

22. The learned Court erred in making the following conclusion of law, to wit:

"This Court has jurisdiction of the suit."

and in refusing defendants' third request for conclusion of law, to wit:

"3. This Court has no jurisdiction of this suit under subsection 14 of section 24 under the Judicial

Code (28 U. S. C. A. sec. 41 (14)) because the plaintiffs have not been deprived of any right, privilege or immunity secured to them by the Constitution of the United States or of any right secured by any law of the United States."

23. The learned Court erred in making the following conclusion of law, to wit:

"The regulation adopted by the defendants on November 6, 1935, as applied to the minor plaintiffs as a condition of their right to attend the Minersville Public Schools, deprives the plaintiffs of their liberty without due process of Law in violation of the Fourteenth Amendment to the Constitution of the United States."

and in refusing the defendants' seventh and eighth requests for conclusions of law, to wit:

"7. The enforcement of said regulation would not violate any right, privilege or immunity secured to the plaintiffs under the Constitution of the United States.

8. The enforcement of said regulation would not violate any right, privilege or immunity secured to the plaintiffs under the Constitution of the Commonwealth of Pennsylvania."

24. The learned Court erred in making the following conclusion of law, to wit:

"The plaintiffs are entitled to an injunction against the defendants restraining them from continuing in force the order expelling the minor plaintiffs from the Minersville Public School and prohibiting their attendance at said school and from requiring the minor plaintiffs to salute the national flag as a condition of their right to attend the said school."

and in refusing the defendants' fourth and ninth requests for conclusions of law

"4. The plaintiffs have failed to establish cause of action entitling them to the relief sought in their Bill of Complaint.

9. The attendance at public schools in the Commonwealth of Pennsylvania is a privilege or advantage which is to be enjoyed by its citizens subject to reasonable conditions and restrictions imposed by the legislature through the local boards of education, and in this case through the Board of Education of Minersville School District. It is not a right entitling the plaintiffs to the relief sought in their Bill of Complaint."

25. The learned Court erred in entering final decree, to wit:

"This cause coming on to be heard before the Honorable Albert Branson Maris, holding the United States District Court for the Eastern District of Pennsylvania, upon the pleadings and proof on file, and all stipulations and arguments of counsel thereon.

From the consideration of all of which thereof it is on this 11th day of July, A. D. 1938

Adjudged, Ordered and Decreed:

1. That the matter in dispute in this cause, exclusive of interest and costs, exceeds the sum or value of Three Thousand ($3,000.00) Dollars.

2. That the regulation of the Board of Education of the Minersville Public Schools adopted on the 6th day of November, A. D. 1935, which said regulation is in words and figures as follows, to wit:

'That the Superintendent of the Minersville Public Schools be required to demand that all teachers and pupils of said schools be required to salute the flag of our country as a part of the daily exercises. That refusal to salute the flag shall be regarded as an act of insubordination and shall be dealt with accordingly.'

as applied to the minor complainants as a condition of their right to attend the Minersville Public Schools is null and void in that it deprives them of liberty without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

3. That the defendants Minersville School District, Board of Education of Minersville School District, consisting of David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans and Wiliam Zapf, and Charles E. Roudabush, Superintendent of Minersville Public Schools, their agents, servants, officers and attorneys, and each of them be, and they hereby are perpetually enjoined and restrained from

(a) continuing in force the order expelling the said minor complainants from the Minersville public schools and from prohibiting their attendance at said schools;

(b) requiring said minor complainants to salute the national flag as a condition of their right to attend said schools.

4. That the defendants Minersville School District, Board of Education of Minersville School District, consisting of David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans and William Zapf, and Charles E. Roudabush, superintendent of Minersville public schools, pay all the costs of this cause, for which execution will issue.

Dated and entered this 11th day of July, A. D. 1938.

By THE COURT

MARIS, *J.*"

Wherefore your petitioners pray that said decree may be reversed and plaintiffs' bill of complaint dismissed with reasonable costs and charges on petitioners' behalf most wrongfully sustained, and for such other and further relief as may seem just and proper.

JOHN B. MCGURL,
RAWLE & HENDERSON,
By JOSEPH W. HENDERSON,
Attorneys for Petitioners and Appellants.

CITATION.

UNITED STATES OF AMERICA, *ss.:*

THE PRESIDENT OF THE UNITED STATES,

To Walter Gobitis, Individually and Lillian Gobitis, and William Gobitis, Minors by Walter Gobitis, Their Next Friend,

GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Third Circuit, to be holden at the City of Philadelphia within thirty days, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States, Eastern District of Pennsylvania, wherein Minersville School District, Board of Education of Minersville School District, David I. Jones, Dr. A. E. Valibus, Claude L. Price, Dr. T. J. McGurl, Thomas B. Evans and William Zapf and Charles E. Roudabush, superintendent of Minersville public schools, are appellants, and you are appellee to show cause, if any there be, why the decree rendered against the said appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable ALBERT B. MARIS, United States Circuit Judge, this tenth day of August, in the year of our Lord one thousand nine hundred and thirty-eight.

(Sgd.) ALBERT B. MARIS,
Circuit Judge.

August 11, 1938.

Service accepted.

(Sgd.) H. M. McCAUGHEY,
Attorney for Plaintiff-Appellees.

PRÆCIPE FOR TRANSCRIPT OF RECORD.

(Filed August 15, 1937.)

To the Clerk:

In making up the record on appeal of the above case, you will include the following papers and no others:

Docket entries.
Bill of complaint.
Motion to dismiss.
Opinion of Court sur motion to dismiss.
Answer of defendants.
Stipulation regarding statement of evidence.
Statement of evidence under Equity Rule 75.
Order approving statement of evidence.
Plaintiffs' requests for findings of fact and conclusions of law.
Defendants' requests for findings of fact and conclusions of law.
Suggestion of death of George H. Beatty, one of the defendants.
Opinion of Court sur hearing on bill, answer and proofs.
Final decree filed July 11, 1938.
Stipulation regarding discontinuance of case against George Beatty.
Præcipe to mark case discontinued as to George Beatty.
Petition for appeal.
Order allowing appeal.
Assignments of error.
Citation.
Præcipe sur transcript of record.
Clerk's certificate.

(Sgd.) JOHN B. MCGUIRL,
RAWLE & HENDERSON,
By THOMAS F. MOUNT,
Attorneys for Appellants.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNSYLVANIA, } *ss.:*

I, GEORGE BRODBECK, Clerk of the United States District Court in and for the Eastern District of Pennsylvania, do hereby certify that the annexed and foregoing is a true and full copy of so much of the pleas and proceedings; in the case of Walter Gobitis, individually, and Lillian Gobitis and William Gobitis, minors, by Walter Gobitis, their next friend v. Minersville School District, Board of Education of Minersville School District, consisting of David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, Thomas B. Evans, and William Zapf, and Charles E. Roudabush, Superintendent of Minersville Public Schools, No. 9727 March Term 1937; as per præcipe filed, a copy of which is hereby attached, the transcript of record in the above-entitled cause is to include now remaining among the records of the said court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the
(Seal) aforesaid court at Philadelphia, this twenty-second day of August, A. D. 1938.

GEORGE BRODBECK,
Clerk.

ORDER ASSIGNING HON. HARRY E. KALODNER FOR ARGUMENT.

(Filed November 9, 1938.)

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE THIRD CIRCUIT.

No. 6862. October Term, 1938.

Minersville School District, Board of Education, et al.,

Defendants-Appellants,

v.

Walter Gobitis, Ind. and Lillian Gobitis, and Wm. Gobitis, Minors by Walter Gobitis, Their Next Friend,

Plaintiffs-Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

And now, to wit: this ninth day of November, A. D., 1938, it is ordered that Hon. Harry E. Kalodner, District Judge, for the Eastern District of Pennsylvania, is hereby assigned to sit in above case in order to make a full court.

J. WARREN DAVIS,
Circuit Judge.

(Endorsements: Order Assigning Hon. Harry E. Kalodner for Argument Received and Filed November 9, 1938, Wm. P. Rowland, Clerk.)

REFERENCE TO ARGUMENT.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE THIRD CIRCUIT.

No. 6862. October Term, 1938.

Minersville School District, Board of Education of Minersville School District, Consisting of David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, Thomas B. Evans and William Zapf, and Charles E. Roudabush, Superintendent of Minersville Public Schools,

Defendants-Appellants,

v.

Walter Gobitis, Individually, and Lillian Gobitis and William Gobitis, Minors, by Walter Gobitis, Their Next Friend,

Plaintiffs-Appellees.

And afterwards, to wit, on the ninth day of November, 1938, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable John Biggs, Jr., Honorable William Clark, Circuit Judges, and Honorable Harry E. Kalodner, District Judge, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the tenth day of November, 1938, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE THIRD CIRCUIT.

No. 6862. October Term, 1938.

MINERSVILLE SCHOOL DISTRICT, BOARD OF EDUCATION OF MINERSVILLE SCHOOL DISTRICT, CONSISTING OF DAVID I. JONES, DR. E. A. VALIBUS, CLAUDE L. PRICE, DR. T. J. McGURL, THOMAS B. EVANS AND WILLIAM ZAPF, AND CHARLES E. ROUDABUSH, SUPERINTENDENT OF MINERSVILLE PUBLIC SCHOOLS,

Defendants-Appellants,

v.

WALTER GOBITIS, INDIVIDUALLY, AND LILLIAN GOBITIS AND WILLIAM GOBITIS, MINORS, BY WALTER GOBITIS, THEIR NEXT FRIEND,

Plaintiff-Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

OPINION.

(Filed November 10, 1939.)

Before BIGGS and CLARK, *Circuit Judges,* and KALODNER, *District Judge.*

CLARK, *Circuit Judge.*

Eighteen big states [1] have seen fit to exert their power over a small number of little children [2] ("and forbid them

[1] Total population according to the latest census circa 38,000,000.

[2] According to the latest casualty lists circa 120.

not"). The method of exercise has sometimes been by their representatives in solemn conclave assembled and sometimes, as here, by an administrative agency (School Board). The matter of exercise is in that field where, above all, or so we had supposed, power must yield to principle. In other words, the area of action is within the aura of conscience.

The appellant School Board is entrusted by statute of Pennsylvania with the delicate, but surely not difficult, task of instructing the public school children under its control in "civics including loyalty to the State and National Government", 24 Purdon's Pa. Stat. Ann., sec. 1551. To that end, as we assume it thought, the following regulation was promulgated on November 6, 1935:

> "That the Superintendent of the Minersville Public Schools be required to demand that all teachers and pupils of said schools be required to salute the flag of our country as a part of the daily exercises. That refusal to salute the flag shall be regarded as an act of insubordination and shall be dealt with accordingly".
>
> Record, p. 6

The appellees, a little girl of 13 and a little boy of 12, refused to salute the flag of "their country" on the appropriate occasion. They stood in respectful silence while the other children submitted to the "requirement" and were "dealt with accordingly" by being expelled.

The reason for their refusal raises the constitutional issue of this appeal. They and their parents are members of a group (we avoid for the present more definite characterization) known as Russellites, or more colloquially, Earnest Bible Students,[3] and Jehovah's Witnesses. The

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[3] ". . . I consider them quacks . . . I dissolve the 'Earnest Bible Students' in Germany; their property I dedicate to the people's welfare; I will have all their literature confiscated."

Pronouncement of A. Hitler, April 4, 1935.

defendant School Board admits that this group "sincerely and honestly believe that the act of saluting a flag contravenes the law of God" in that it constitutes a bowing down to a graven image.

The so-called flag salute statute or regulation first appeared in Kansas in 1907. The idea, without benefit of sanctions, seems to have originated with an employee of the magazine, The Youth's Companion. It was first put in practice at the National Public School celebration on October 21, 1892, pamphlet, The Youth's Companion Flag Pledge. As with its related predecessor the teacher's oath (Nevada, 1866) the voluntary character of the ceremonial act soon disappeared into law and litigation, pamphlet, Oaths of Loyalty for Teachers, published by American Federation of Teachers, Chicago, Illinois. There is some current indication of a reversal in the trend of public opinion at least. Those who attended the training camps of World War No. 1 will remember our staff of life, the manuals of Colonel Moss. That distinguished officer, now retired, has also written extensively on the American flag. In his latest book, we find him taking a secular position remarkably like that of the plaintiff-appellees. He says:

> "Another form that false patriotism frequently takes is so-called 'Flag-worship'—blind and excessive adulation of the Flag as an emblem or image,—superpunctiliousness and meticulosity in displaying and saluting the Flag—without intelligent and sincere understanding and appreciation of the ideals and institutions it symbolizes. This, of course, is but a form of idolatry—a sort of 'glorified idolatry', so to speak. When patriotism assumes this form it is nonsensical and makes the 'patriot' ridiculous".
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> Chap. 14, Patriotism of the Flag, Moss, The Flag of the United States, Its History and Symbolism, pp. 85-86.

So also, Mr. Laurens M. Hamilton, a direct descendant of Alexander Hamilton, president of the New York Chapter

of the Sons of the American Revolution (an organization never criticized for its lack of patriotism) told the Daughters of the American Revolution at the forty-second annual meeting of the Washington Heights Chapter:

> "Laws cannot take the place of feeling. We must beware of legislation such as that forcing people to salute the flag. We cannot make people salute, we cannot force them to or command them to. What we can do is to make them want to salute it".
>
> The New York World Telegram, April 14, 1939

This change in social sentiment appears to have reached the consciousness of only one legislator. In Massachusetts this year Mr. Curtis introduced an amendment to the original act which expressly permits the excusing from the flag salute of pupils whose "parent or guardian has scruples, which he regards as religious, against such salute", Senate No. 449, March, 1939 (Mass.). In New Jersey, on the other hand, the opposite is true. The original act was "strengthened" to make a crime of "influencing a pupil against the salute to the flag by instruction printed or otherwise", P. L. N. J. 1939, c. 65, sec. 1.

These little children ("suffer them") are asking us to afford them the protection of the First Amendment (Bill of Rights[4]) to the Constitution and to permit them the

[4] The actual amendment is the Fourteenth, the action complained of being by a state. The Supreme Court has, however, reversed its original holding, Barron v. Baltimore, 7 Peters 242 (1833), that the privileges of the Bill of Rights are not included within the term "due process", Gitlow v. New York, 268 U. S. 652, Whitney v. California, 274 U. S. 357, Burns v. U. S., 274 U. S. 328, Stromberg v. California, 283 U. S. 359, Near v. Minnesota, 283 U. S. 659, Grosjean v. American Press Co., 297 U. S. 233; Shattuck, The True Meaning of the Term "Liberty" In Those Clauses in the Federal and State Constitutions Which Protect "Life, Liberty and Property", 4 Harvard Law Review, 365; Warren, The New "Liberty" Under the Fourteenth Amendment, 39 Harvard Law Review 431; Bill of Rights

"free exercise" of their "religion". That supplication raises, as we see it, two questions. First, do they bring themselves within the meaning of the word "religion" as used in the Constitution; and second, is there any limitation on the adjective "free" in the constitutional phrase "free exercise"?

Appellant suggests that religion is an objective rather than a subjective matter. He goes on to argue that no one could conceivably appraise non-flag saluting in theological terms. In other words, he applies some sort of average reasonable man standard. We agree that the test is not without subjective limitations. The individual cannot claim any and all beliefs religious. Maybe he should be able to, but the fact is that the Constitution uses a certain word of art and does not employ the wider term "belief". A perfect illustration of this distinction is found in the cases of certain conscientious objectors under the Selective Draft Act of 1917, as amended, 40 Stat. 76, 534, 885, 955 (50 U. S. C. A. p. 165). As is known, most of those who objected to service in war offered religious scruples as an excuse. There were, however, a certain number whose claim for exemption was based simply on disbelief in war as an instrument of human policy. Their claims were disallowed and all of them were sentenced to long terms. See Case, Conscientious Objectors, 4 Ency. of Social Sciences p. 210; Second Report of the Provost Marshal General to the Secretary of War on the Operation of the Selective Service System, pp. 58-59; Third Assistant Secretary of War, Statement as to Treatment of Conscientious Objectors in the Army, September 28, 1918, Secretary of War, Statement as to Treatment of Conscientious Objectors in the Army, June 18, 1919.

As in most phases of the subject, there is not complete agreement on a definition of religion, Hopkins, The History

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and Fourteenth Amendment, 31 Columbia Law Review 468, Constitutional Law; Liberty of Assembly Under the Fourteenth Amendment, 25 California Law Review 496, The Hague Injunction Proceedings, 48 Yale Law Journal 257.

of Religions; Houf, What Religion Is and Does; Menzies, History of Religion, rev. ed.; Dewey, A Common Faith. Some interesting cases might (and may) arise under the broader conception, as for instance anything within the comprehensive term sacred, see Crawley, who gives the study of religion the wide scope of a comparative hierology. (The Tree of Life, p. 209.) Our courts have promulgated what has been referred to as a "minimum definition". Compare the language of a distinguished writer on the subject with that of Mr. Justice Field speaking for the Supreme Court of the United States.

The religious philosopher says:

> "Religion is squaring human life with superhuman life . . . What is common to all religions is belief in a superhuman power and an adjustment of human activities to the requirements of that power, such adjustment as may enable the individual believer to exist more happily".
>
> Hopkins, The History of Religions, p. 2[5]

The legal philosopher says:

> "The term religion has reference to one's view of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will".
>
> Davis v. Beason, 133 U. S. 333, 342

By the same token the definition exeludes any theory of sensible choice. If the requirement is present, the doctrinal views of the average man or the average official are wholly irrelevant. Professor Zollman speaks as follows:

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[5] See also:

> ". . . a propitiation or conciliation of powers superior to man which are believed to direct and control the course of nature and of human life".
>
> Frazer, The Golden Bough, 3rd ed. i. 222

" 'Were the administration of the great variety of religious charities with which our country so happily abounds, to depend upon the opinion of the judges, who from time to time succeed each other in the administration of justice, upon the question whether the doctrines intended to be upheld and inculcated by such charities, were consonant to the doctrines of the Bible; we should be entirely at sea, without helm or compass, in this land of unlimited religious toleration'. The law therefore does not presume 'to settle differences of creeds and confessions, or to say that any point of doctrine is too absurd to be believed' ".

Religious Liberty in the Law, Part 2, 17 Michigan Law Review 456, 460-461

This last sentence is from an early (1836) Pennsylvania case, Schriber v. Rapp, 5 Watts 351, 363; 30 Am. Dec. 327; See also, 3 Scott on Trusts sec. 371.4.

The group to which the plaintiff-appellees belong comes plainly within the "most minimum" definition. It is the very thoroughness of their belief in the supernatural that has gotten them into trouble. Indeed, they qualify even under the more limited "well-recognized" of the Selective Service Act, 50 U. S. C. A. p. 165. Professor Elmer T. Clark lists them in his book, The Small Sects In America, and describes them as follows:

"The most vehement and spectacular, and also the most vigorous propagandists, of all the Adventists are the followers of the late 'Pastor' Charles Taze Russell, now known as the International Bible Students' Association, and sometimes called 'Jehovah's Witnesses'. The group is not a denomination, has no churches or ministry, and is not listed by the census; it is, indeed, bitter in its denunciation of all churches, Catholic and Protestant alike. The movement was created and controlled by Russell, who was an uneducated

haberdasher of Allegheny, Pennsylvania, and at his death the mantle fell on the one Judge J. F. Rutherford. . . .

"Russell's exegesis differs from anything else that ever was on land or sea! He observes no canons of criticism and arrives at none of the conclusions reached by other students".

Clark, The Small Sects in America, pp. 58-59

See also, Drake, Who Are Jehovah's Witnesses, 53 Christian Century, April 15, 1936, p. 567. One might note that the sect does not appear to practice the tolerance that it now asks for these young members of its flock. Incidentally, Professor Clark and the publication Religious Bodies, 1926, Vol. 2, Bureau of the Census, United States Department of Commerce, indicate how far from the average religious man's concept the beliefs of most of these so-called small sects depart.[6]

The noun religion is specific and has therefore what might be called historical and institutional limitations. The adjective free is general and its limitations, if any, must therefore be constitutional and politically scientific. And that is just what they are. We, this court, and finally the United States Supreme Court, Committee for Industrial Organization v. Hague, 25 F. Supp. 127, 101 F. (2d) 774, U. S. , June 5, 1939, had recent occasion to consider the word in relation to speech and assembly. Many of the

[6] Religious Bodies, 1926, Vol. 2: Seventh Day Adventist, p. 25; Apostolic Overcoming Holy Church of God, p. 58; Two-Seed-in-the-Spirit Predestinarian Baptists, p. 219; Dunkers, p. 226; Progressive Dunkers, p. 243; River Brethren, p. 286; United Zion's Children, p. 295; Christadelphians, p. 306; Christian Scientists, p. 354; Nazarenes, p. 392; Amana Society, p. 439; Shakers, p. 443; Anglicans, p. 452; Burning Bush, p. 569; Pillar of Fire, p. 584; Mormons (Latter Day Saints), p. 665; Mennonite Bodies, p. 842; Schwenkfelders, p. 1309.

considerations there validated apply here and we need not repeat them. There are others that have even greater cogency. They can be summed up thus. A man may die for the right to express his opinion. He has died or suffered worse than death for the right to worship according to his conscience. That is implicit in the definitions of religion we have cited, in the long history of the struggle for religious liberty before the law, and in the utterances of our statesmen. That history and those sayings are undoubtedly taught in this very school at Minersville and are so well-known anyway that we shall only encumber this opinion with a few references and quotations.

The leading authority under the common law of England is, of course, Paterson. He devotes the second division of his work, Liberty of the Press, Speech and Public Worship, to an excellent account of the protracted struggle for toleration in Great Britain, Division of the Law Relating to the Security of Public Worship. Its successful continuation on the American continent is outlined in Crooker, The Winning of Religious Liberty, and the operation of the resultant constitutional mechanism which now governs and safeguards our manifold religious pursuits is carefully chronicled by Professor Zollman in his article, Religious Liberty in the Law, above cited. Three wise men of American public life have put into these words the concepts to which that mechanism is geared.[7]

> "Religion is a subject on which I have ever been most scrupulously reserved. I have considered it as a matter between every man and his Maker, in which no other, and far less the public, had a right to intermeddle".
>
> Thomas Jefferson, Letter to Richard Rush in 1813

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[7] These fellow countrymen of ours are only echoing the earlier words of the great 17th Century figures, the statesman and author, Sir William Temple (1628-1699), the philosopher, John Locke (1632-1704), and the 18th Cen-

"The love of religious liberty is a stronger sentiment than an attachment to civil or political freedom. That freedom which the conscience demands, and which men feel bound by their hopes of salvation to contend for, can hardly fail to be attained. Conscience in the cause of religion, and the worship of the Deity, prepares the mind to act and suffer beyond almost all other causes. History instructs us that this love of religious liberty, a compound sentiment in the breast of men, made up of the dearest sense of right and the highest conviction of duty, is able to look the sternest despotism in the face".

Daniel Webster, Speech in commemoration of the First Settlement of New England, Plymouth, 1820

". . . The battle for religious liberty has been fought and won with respect to religious beliefs and practices, which are not in conflict with good order, upon

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tury Cabinet member, Lord William Wyndham Grenville (1759-1834), all of whom embody the same glorious, as we think, conception in the following passages:

"Now, the way to our future happiness has been perpetually disputed throughout the world; and must be left at last to the impressions made upon every man's belief and conscience, either by natural or supernatural means; which impression men may disguise or dissemble, but no man can resist. For belief is no more in man's power than his stature or his features; and he that tells me I must change my opinion for his, because it is the truer and the better—without other arguments that have to me the force of conviction—may as well tell me I must change my gray eyes for others like his that are black, because these are lovelier or more in esteem. . . . Sufficient and conceited men who talk much of right reason and mean always their own, and make their private imagination the measure of general truth".

Temple, The Right of Private Judgment in Religion, p. 79

the very ground of the supremacy of conscience within its proper field. What that field is, under our system of government, presents in part a question of constitutional law and also, in part one of legislative policy in avoiding unnecessary clashes with the dictates of conscience. There is abundant room for enforcing the requisite authority of law as it is enacted and requires obedience, and for maintaining the conception of the supremacy of law as essential to orderly government, without demanding that either citizens or applicants for citizenship shall assume by oath an obligation to regard allegiance to God as subordinate to allegiance to civil power".

Mr. Chief Justice Hughes dissenting in U. S. v. MacIntosh, 283 U. S. 605, 634

As applied to speech and assembly, we observed and in fact held that free is not absolute and, with pundit Lipp-

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"All the life and power of religion consists in the inward persuasion of the mind; and it is impossible for the understanding to be compelled to the belief of anything by the force of the magistrate's power. . . . Every man has the care of his own eternal happiness, the attainment whereof can neither be facilitated by another man's industry, nor the loss of it turn to another man's prejudice, nor the hope of it be forced from him by any external violence".

Locke, Letters on Toleration, p. 111

"It is the inveterate habit of intolerance to impute to the followers of every rival sect opinions which they disclaim, and to deduce from these tenets conclusions which they utterly deny. Justice and charity on the contrary, give to others the same liberty which we claim for ourselves—the liberty to form our opinions by the light of our own reason, to adopt, to investigate, to interpret for ourselves the tenets which we embrace, and to be credited in our exposition of them until our own practice shall have proved its insincerity".

Lord Grenville, 22 Parl. Deb. 668

mann, wondered if anything is, 124 Atlantic Monthly, p. 616. We continue that wonder because here also an even greater urgency for freedom falls before reality. That reality lies in the need for society and so in the needs of society. It is rather interesting to note that in this case the proponents of religious freedom (the greater) are quite willing to concede this; whereas the proponents of free speech (the lesser) were quite unwilling to do so in the Hague case. There may be a distinction in the tendency of religious beliefs to go beyond the contemplations of Confucius into the practices of Brigham Young. This tendency piles up the precedents we discuss later. One might wonder, however, if the practice of rioting is not sometimes as bad as the practice of polygamy.

At any rate the concession that the maxim, "salus populi suprema lex" embraces the dictates of conscience was early made and by that great champion of religious liberty, Roger Williams of Rhode Island. Likening the populace to a ship's company, he said:

> "Liberty of conscience turns upon these two hinges: 1, that no one be forced to attend the ship's prayers or prevented from attending prayers of his own; 2, that if either refuse to obey the laws and orders of the vessel concerning its preservation and the common peace, or mutiny, or maintain that there should be no superior, that the commander in such case shall judge, resist, compel and punish such transgressor according to his deserts and merits".
>
> Roger Williams, Rhode Island Historical Society 4, p. 241

The law today is as he admitted it must be. Professor Freund, the definitive authority on the subject of "police power" (jurist's argot for salus populi), sums it up:

> "The constitutional guaranty of religious liberty covers above all the two cardinal points of worship and doctrine, the two forms in which the uncontrollable facts of faith and opinion find their principal outward

expression; it includes secondarily also customs, practices and ceremonies, which even where they do not form directly a part of worship, are prescribed by religion. That this liberty does not altogether supersede the operation of the police power is recognized by the constitutional proviso found in many states that it shall not excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state, a proviso which may be implied where it is not expressed. . . . In the United States legislation punishing polygamy was upheld, though the Mormons conscientiously believed that their religion sanctioned and commended the practice. The Supreme Court emphasized the distinction between opinion and precept on the one hand, and practices affecting the social order on the other. Quoting with approval Jefferson's words 'that it is time enough for the rightful purposes of civil government to interfere when principals break out into overt acts against peace and good order'. It held that Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order".

Freund, Police Power, p. 497

and another distinguished writer gives his approval:

"Under the modern idea therefore, of intellectual and religious freedom, but at the same time of the paramount authority of the law, we generally and no doubt should generally, place a limit at the overt act and make its legality depend not on its motive but on its direct effect on the public weal. But the maxims 'sic utere tuum ut alieno non laedas', and 'salus populi suprema est lex' are as applicable in religious matters as in secular; and the state is and ever should be jealous of its public policy".

Bruce, Religious Liberty in the United States, 74 Central Law Journal, 279, 285

We have then to balance the two intangibles salus and religio and determine to which arm of the scale the weight of our decision must be added. In doing so, under our system of case law, we are entitled, or rather constrained, to examine the precedents, Cardozo, The Nature Of The Judicial Process. All of these that are cited in either brief and many more besides are collected in four standard sources, 11 Am. Jur. pp. 1100-1104; Constitutional Law, West System Digest, key no. 84; U. S. C. A., Constitution, Part 2, pp. 453-456; Association of American Law Schools Selected Essays on Constitutional Law, Vol. 2, pp. 1108-1175. Having examined these decided cases, we, again under our system, must search for a ratio decidendi, and then include or exclude our own particular set of facts.

As indicated by their decisions, our courts consider that the peace and good order of the community must prevail over conscience, (a) wherever its mental or physical health is affected, (b) wherever a violation of its sense of reverence makes a breach of the peace reasonably foreseeable, and (c) wherever the "defense of the realm" is imperiled. So in the broad category of physical and mental health, we have cases which defer the dictates of individual scruple to the exclusion of obscene literature from the mails, Knowles v. U. S., 170 Fed. 409 the use of obscene language, Delk v. Commonwealth, 166 Ky. 39, 178 S. W. 1129; the vaccination, Vonnegut v. Baum, 206 Ind. 172, and physical examination of school children, Streich v. Board of Education, 34 S. D. 169; the physical examination of prospective brides and grooms, Peterson v. Widule, 151 Wis. 641; the medical qualification of physicians (faith healing etc.), Fealy v. Birmingham, 73 So. 296 (Ala.); Post v. U. S., 135 Fed. 1022; People v. Pierson, 176 N. Y. 201; State v. Verbon, 8 Pac. (2) 1083; State v. Miller, 229 N. W. 569; the limitation of the amount of sacramental wine consumable under the Prohibition Act, Shapiro v. Lyle, 30 F. (2d) 971; the elimination of drug addiction; State v. Big Sheep, 243 Pac. (Mont.); the regulation of the exhumation of dead bodies, In re Wong Yung Quy,

2 Fed. 624, 632; the preservation of quiet, State v. White, 64 N. H. 48 (Salvation Army); City of Louisianna Bottome, 300 S. W. 316; the suppression of mail frauds, New v. U. S., 245 Fed. 710, and kindred schemes, McMasters v. State, 21 Okla. Crim. Rep. 318 (Spiritualism—exorcisement of evil spirits); State v. Neitzel, 69 Wash. 567 (astrology).

Reverence is manifestly something deeper than law. The mere creation by fiat of a particular moral standard would not mean that its violation might reasonably be expected to arouse the passions productive of peace breaches. There are, however, certain "ethics" whether furnished with legal sanctions or not, that do plumb those reaches of our emotions. So in a monogamous civilization polygamy shocks and is forbidden, Reynolds v. U. S., 98 U. S. 145, 163; Davis v. Beason, 133 U. S. 333, 342; Church of Jesus Christ of the Latter Day Saints v. U. S., 136 U. S. 1, 49, and see also, Warren, The Supreme Court in United States History p. 419. In a deistic civilization blasphemy shocks and is forbidden, State v. Mockus, 120 Me. 84, 113 A. 39; State v. Chandler, 2 Del. (2 Har.) 553; Commonwealth v. Kneeland, 37 Mass. 206; People v. Ruggles, 8 Johns. 290 (N. Y.); Updegrath v. Commonwealth, 11 S. & R. 394 (Pa.). In a Christian civilization disrespect for the Sabbath shocks and is forbidden, State v. Blair, 288 Pac. 729; Elliott v. State, 242 Pac. 340; Shover v. State, 10 Ark. 259, 263; State v. Bott, 31 La. Ann. 663, 665; Lindenmueller v. People, 33 Bar. 548, 560; State v. Barnes, 22 N. D. 18, 132 N. W. 215; Sparhawk v. Union Pacific Ry. Co., 54 Pa. 401, 406. It might be noted that the cases on these last seem to take an unduly sectarian position and further that the observance of Sunday is now generally placed on the basis of health, State v. Petit, 177 U. S. 164; Zollman, Religious Liberty in the Law, 17 Michigan Law Review 355, 373.

So far we have been talking more about salus in the sense of welfare among the citizens of a community. Clearly that presupposes a country and therefore presupposes until the millennium at least, its defense. Because, however, of

what might be termed thinking wishful for that very millennium, we find the conflict of conscience over "bearing arms" one of the saddest in this rather sad field. Professor Lecky, in his famous History of European Morals, traces the beginnings of this struggle. (Vol. 2, p. 149.) Public opinion, at least in the common law democracies, has taken cognizance of this conflict between scruple and safety, 5-6 Geo. V, ch. 104, secs. 2 (1) and (3); Statutes of Canada, 7-8 Geo. V, ch. 19, sec. 11 (1) f. From the inception of the Republic religious objectors have been expressly or impliedly exempt from military service. Annals of Congress, Thirteenth Congress, Third Session, Vol. 3, pp. 774, 775; Selective Draft Act, above cited; 32 U. S. C. A. sec. 3, and see U. S. v. Macintosh, 263 U. S. 605, 627, et seq.; Macintosh v. U. S., 42 F. (2d) 845; 26 Illinois Law Review 375; 30 Michigan Law Review 133; 11 Boston University Law Review 532; 80 University of Pennsylvania Law Review 275. These salutary laws made the constitutional issue of rare occurrence. Whenever it is presented, the decision, as it must, has been in favor of self-preservation, U. S. v. Macintosh, above cited, and see U. S. v. Schwimmer, 279 U. S. 644; Hamilton v. The Regents, etc., 293 U. S. 245.

We have not included in our classification of authorities those bearing on the issue of the case at bar. They are numerous, see Appendix 1, but they stand or fall by our own rightness as finally determined. We may say hardly a kind word about any of them appears in the legal periodicals, see Appendix 2. Further, there are no binding precedents among them, see Appendix 3.

We have set forth the cases. What does an analysis show to be their ratio decidendi? Does compulsory flag saluting come within it? In making our analysis we must keep constantly in mind what we have on those scales which must come down on one side or the other. A framework of government presupposes its own welfare and our particular framework prescribes religious liberty. Under certain

circumstances the two may be mutually exclusive. The necessity for any choice betwen conscience and country is tragic. It must be made. Salus is a matérial conception. The injury is to the body and not the soul of the body politic. This eliminates the gentler aspects of love of country. A compulsory voting law, Merriam and Gosnell, Non-Voting, Its Causes and Methods of Control (1924), might well yield to scruples. On the other hand the state's existence has material foundations other than the martial one. Conscience could scarcely be added to the reasons for tax avoidance. But until wars and rumors of wars cease to trouble, bearing arms must be the means of safety and as such means it must depend on the collective, however determined (cf. war referendum proposals), and not the individual ("my country right or wrong") will.

All but two classes of the cases are in negative form. In most of them, the religious objector is prohibited from propitiating the Deity in a certain way; he is not forced to commit a sacrilege. For instance, the Mormon is not damned for monogamy, the astrologist or spiritualist for personally consulting the stars or the spirits, or the Salvationists for using the soft pedal. The character of the field of health, of arms, and of the case at bar requires compulsion rather than prohibition. In the last named, the inoculation is against a spiritual indifference or disloyalty to country instead of a physical disease.

Cicero inversely describes the disease in his famous definition of patriotism. To that definition, we most humbly subscribe:

> "Cari sunt parentes, cari liberi, propinqui; familiares; sed omnes omnium caritates patria una complexa est; pro qua quis bonus dubitet mortem oppetere si ei sit profuturus?"
>
> Cicero, De Officiis, 1, 17

A modern writer on ethics classifies this same abstraction under the head of Benevolence in his discussion of Intui-

tionism, Sidgwick, The Methods of Ethics, p. 251. But is the disease so dangerous that it comes within the "clear and present" of the surely analogous free speech cases, Schenck v. U. S., 249 U. S. 47; Frohwerk v. U. S., 249 U. S. 204; Debs v. U. S. 249 U. S. 211; Abrams v. U. S., 250 U. S. 616; Schaefer v. U. S., 251 U. S. 466; Pierce v. U. S., 252 U. S. 239; O'Connel v. U. S., 253 U. S. 142; Gilbert v. Minnesota, 254 U. S. 325; Whitney v. California, 274 U. S. 357; Stromberg v. California, 283 U. S. 359; Herndon v. Lowry, 301 U. S. 242. Love of country in its relation to the armed forces thereof may have either a positive or a negative effect. It may prevent treachery and it may promote courage. There are plainly many more certain, if less pleasant, methods of providing against that extreme of disloyalty which is treachery. So, also there are many equally certain, if less noble, methods of inciting to the martial zeal which is bravery on the field of battle. If all armies had to be volunteer, it might be otherwise. As it is, considerations of prestige in both its positive (promotions, decorations, etc.) and negative (fear of ridicule etc.) facets operate and make the disease only para at most. After all, even mercenary troops used to win wars; a fortiori, is the remoteness of the sock-knitting and nursing abilities of grown-up girls. See U. S. v. Bland, 283 U. S. 636; U. S. v. Schwimmer, above cited. We conclude that patriotism is an added advantage rather than an essential whose absence is dangerous in the clear and present sense.

An even more "clear, cogent and convincing," as the books say, argument follows from the type of vaccine used. That it must be reasonably effective is both a sensible and recognized canon of police power, Jacobson v. Mass., 197 U. S. 11. The punishment of polygamy, drum beating, blasphemy, and faith healing is indispensable to accomplish their prohibition. So, too, the prevention of epidemics requires vaccination. Is the same thing true of compulsory flag saluting? We can concede the general connection between the emblem and the virtue. In the words of a learned Japanese patriot:

". . . Any nation which makes light of the flag must necessarily sink. Disrespect to the flag evinces a state policy pliable and submissive".

M. Matsunami, The National Flag of Japan, p. 6

Does the conception embrace the next step? The abstract problem postulated concerns the effectiveness of teaching love (of country) by force emanating from the would-be beloved (an administrative instrumentality of that country). We do not doubt that children can and have been forced to learn Latin or eat spinach and so eventually to love them. But this pedogogical victory has more often than not been won at the price of resentment towards the disciplinarian. In our particular circumstance, then, that resentment clashes with and cancels the very affection sought to be instilled. In recognition of this logical absurdity, we find students of educational psychology against overemphasis of the flag salute. They say:

"An objective appraisal of formulas frequently proposed reveals that many are concerned not with patriotism but with traditional or popular means of expressing it. One becomes loyal by swearing his allegiance or saluting the flag, singing the national anthem or celebrating a national holiday, venerating the makers of the organic law or worshipping those who now interpret it. . . .

"If American schools are to develop a creative citizenship, they must do more than train the next generation in matters which should be routine and voluntary. These means of expressing patriotism upon which some leaders would place emphasis are employed in dictatorships as well as in democracies. Loyalty in our republic must have its origin in concepts which are an integral part of the national philosophy itself".

Campbell, In Quest of Patriotism, The Nation's Schools, September, 1938, p. 42

". . . The noble sentiment of patriotism is worn threadbare not only in our movie houses but also in many schools. There are schools all over the United States in which the pupils have to go through the ceremony of pledging allegiance to the flag every school day. It would be hard to devise a means more effective for dulling patriotic sentiment than that. This routine repetition makes the flag-saluting ceremony perfunctory and so devoid of feeling; and once this feeling has been lost it is hard to recapture it for the 'high moments' of life.

"Furthermore, needless compulsory routine tends to set up in some minds an antagonistic attitude. This becomes associated with the ceremony itself and because it is automatic in response the person concerned can not later easily dissociate the two, even though he is intellectually convinced that the two need not go together".

W. C. Ruediger, The George Washington University, 49 Schools and Society, February 25, 1939, p. 249

Some sensing of which may have led the school superintendent of Minersville to admit in his testimony that flag saluting, although an appropriate one, is not the only method of teaching loyalty (R. p. 98). The salute, therefore, unlike the other exercises of the police power, negative and positive, which we have mentioned, is of at least doubtful efficacy and, as applied to appellees; plainly lacking in necessity. See Appendix 4.

A fourth and last distinction exists in the age of the target. In all but the medical cases the victims are adults. It is elementary to recognize disability of infants with respect to their contracts, torts, and to some extent crimes, 31 C. J. pp. 1058-1112. The cardinal ethical principle of this legal phenomenon is implicit in the very statutes by

virtue of which the appellant performs its function. It is told:

> ". . . No cruel experiment on any living creature shall be permitted in any public school of this Commonwealth".
>
> 24 Purdon's Pa. Stat. Ann. sec. 1554

Here, nevertheless, that disability is not only not recognized, but is exploited. Children are faced with the alternative of conforming to their parents' view of religion or foregoing the privilege of education. That is true, of course, in the medical cases. There again, however, we are saved by the logic of the clear and present danger test. Little children with smallpox are as infectious as their elders.

To summarize our analysis: compulsory flag saluting is designed to better secure the state by inculcating in its youthful citizens a love of country that will incline their hearts and minds to its more willing defense. That particular compulsion happens to be abhorrent to the particular love of God of the little girl and boy now seeking our protection. One conception or the other must yield. Which is required by our Constitution? We think the material and not the spiritual.

Compulsion rather than protection should be sparingly exercised. Harm usually comes from doing rather than leaving undone, and refraining is generally not sacrilege. We do not find the essential relationship between infant patriotism and the martial spirit. That essence we have borrowed from the settled law of another and cognate part of this same provision of the Bill of Rights. Departure from a recently evolved ritualistic norm of patriotism is not clear and present assurance of future cowardice or treachery. And that is especially so, where compulsory adherence to that norm is neither logically consistent with, nor pedagogically indispensible to, the dissemination of

loyalty. Equally important, we think, is the School Board's mistake in the domain where they are not supposed to make mistakes. They misunderstand and therefore misapply a fundamental of education. Children, as well as "birds and animals", 24 Purdon's Pa. Stat. Ann. sec. 1551, are entitled to the benefits of humane treatment.

We conclude with two examples from the history of the "small sects" of Pennsylvania's early days. The state was colonized and founded by William Penn. He came to the new country because his refusal to subordinate religious scruples to educational coercion led to his expulsion from Oxford University in the old. Document by John Aubrey (now in the Bodleian Library).

George Washington, the almost universal character of whose wisdom always freshly surprises, a century later wrote a letter to the descendants of those whom William Penn brought with him. In it General Washington said:

> "Government being, among other purposes, instituted to protect the persons and consciences of men from oppression it certainly is the duty of rulers, not only to abstain from it themselves, but according to their stations to prevent it in others.
>
> "I assure you very explicitly, that in my opinion the conscientious scruples of all men should be treated with great delicacy and tenderness; and it is my wish and desire, that the laws may always be as extensively accommodated to them, as a due regard to the protection and essential interests of the nation may justify and permit".
>
> Writings of George Washington (Sparks Ed. Vol. 12, pp. 168-169), Letter to the Religious Society Called Quakers, October, 1789

The appellant School Board has failed to "treat the conscientious scruples" of all children with that "great delicacy and tenderness". We agree with the father of our

country that they should and we concur with the learned District Court in saying that they must.

The decree of the District Court is affirmed.

A true Copy:
Teste:

Clerk of the United States Circuit Court of Appeals for the Third Circuit.

APPENDIX.

1. Appellants' position is ostensibly sustained by Hering v. State Board of Education, 189 Atl. 629 (N. J.), affirmed per curiam, 194 Atl. 177, appeal dismissed, 303 U. S. 624; Nicholls v. Mayor and School Committee of Lynn, 7 N. E. (2) 577 (Mass.); Leoles v. Landers, 192 S. E. 218 (Ga.), appeal dismissed, 302 U. S. 656; Gabrielli v. Knickerbocker, 74 Pac. (2) 290 (Cal.), reversed, 82 Pac. (2) 391, appeal dismissed and certiorari denied, 83 L. Ed. 765; Johnson v. Town of Deerfield, 25 F. Supp. 918 (Mass.), affirmed 83 L. Ed. 765; People v. Sandstrom, 279 N. Y. 523, and see Shinn v. Barrow, 121 S. W. (2) 450 (Tex.).

We exclude from our citation the many adjudications dealing with compulsory bible reading in public schools. These, though factually related to our circumstance, are in irreconcilable conflict with one another and seem in the last analysis to turn upon a nice construction of state constitutional provisions regarding primarily the establishment rather than the free exercise of religion. See 34 Michigan Law Review 1237; 28 Michigan Law Review 431; 16 Virginia Law Review 509.

2. Judicial condonation of the flag salute in our circumstances has been condemned in 51 Harvard Law Review 1418; 23 Minnesota Law Review 247; 27 Georgetown Law Journal 231; 18 Oregon Law Review 127; 23 Iowa Law Review 424; 2 University of Pittsburgh Law Review 206; 5 University of Pittsburgh Law Review 86; 86 University of Pennsylvania Law Review 431; 12 Temple Law Quarterly 513; 23 Cornell Law Quarterly 582; and see, Gardner and Post, The Constitutional Questions Raised by the Flag Salute and Teachers' Oath Acts in Massachusetts, 16 Boston University Law Review 802; Clark, The Limits of Free Expression, 73 United States Law Review, 392, 399. Compare 36 Michigan Law Review 465; 6 Kansas City Law

Review 217. Many of these law notes give unstinted and, as we think, deserving praise to the opinions of the learned court below, Gobitis v. Minersville School District, 21 F. Supp. 581; 24 F. Supp. 271.

3. Four cases bear the per curiam imprimatur of the Supreme Court. Three of these, however, Hering v. State Board of Education, Looles v. Landers, and Johnson v. Town of Deerfield, above cited, deal with a circumstance entirely distinct from the case at bar. In each of them, both the state legislature declared, and the highest state court affirmed, a policy of flag saluting. By reason of this legislative and judicial determination, the connection between an omission to salute the flag and the commission of an injury to the public weal, becomes legally and factually closer, Gitlow v. New York, 268 U. S. 652, and see, Brown, Due Process of Law, Police Power and the Supreme Court, 40 Harvard Law Review 943. But here there is no such declaration or affirmance of policy. The legislature of Pennsylvania has gone no further than to prescribe the teaching of civics. The fourth case, Gabrielli v. Knickerbocker, above cited, involves as here, a regulation, but one which had been sustained by the highest court of California. However, the Supreme Court dismissed the appeal therefrom merely for want of jurisdiction under 28 U. S. C. A. sec. 344 (1) and denied certiorari under 28 U. S. C. A. sec. 344 (3). By the same token the jurisdictional issue has now been settled in favor of exercise, Hague v. Committee for Industrial Organization, U. S. , June 5, 1939, above cited.

Hamilton v. The Regents (the land grant college case), 293 U. S. 245, often cited, is, we think, distinguishable. There a religious objector was expelled from a state university on his refusal to participate in military instruction (originally commanded by the Congress). The decision turned inter alia upon the fact that since the state did not draft students to attend the university it did not coerce the objector in the exercise of his religion, cf. The Civil

Rights Cases, 109 U. S. 148. Here, of course, there is such coercion. The statutes call for compulsory attendance, 24 Purdon's Pa. Stat. Ann. sec. 1421, and the functioning of truant officers who have full police power to arrest without warrant any child who fails to attend or is incorrigible, insubordinate, or disorderly, 24 Purdon's Pa. Stat. Ann. sec. 1471. Thus if the offending child is too poor to purchase private education it may well end in reform school, 11 Purdon's Pa. Stat. Ann. sec. 243 (4) (c), sec. 250 (d), cf. Clark, The Limits of Free Expression, 73 United States Law Review, 392, 399, et seq., and its parents in jail, 24 Purdon's Pa. Stat. Ann. sec. 1430, and see 2 University of Pittsburgh Law Review 206, above cited. Furthermore, under constitutions worded as in Pennsylvania, 1 Vale's Pennsylvania Digest, p. 421, a child's right to primary (school) as distinguished from secondary (college) education is capable of enforcement at law. State v. Wilson, 297 S. W. 419, Bishop v. Hous, 35 S. W. 246, Newman v. Schlach, 50 Pac. (2) 36, Valentine v. Independent School District, 183 N. W. 434, People ex rel. Cisco v. School Board, 161 N. Y. 598.

4. The record before us sheds but little light upon the problems in educational psychology here discussed. Nor do the briefs direct us to any authorities on the subject. Compare Mueller v. Oregon, 208 U. S. 412. To decide questions of reasonableness in the absence of undisputed factual proof or knowledge is of course open to criticism. As has been aptly observed:

> ". . . these underlying questions of fact, which condition the constitutionality of the legislation, are at times questions on which the layman feels justified in forming his own opinion and in declining to yield it to that of the judge, at least when the judge bases his determination, not on evidence produced in the case before him, but on his general information,—the same foundation upon which the layman builds his conclu-

sion. As an example, the layman may be quite ready to defer to the opinion of the court when the decision requires a definition of the legal significance of the phrase '*ex post facto law;*' but when the court decides that a law limiting the hours that people may work in bakeshops has no substantial relation to the promotion of the public health, he is inclined to doubt the finality of this finding, since he knows of no particular reason for supposing that the judges are better able to decide such a question than other intelligent persons, unless their determination is based upon evidence produced, before them in the usual way carefully weighed and considered".

> Bikle, Judicial Determination of Questions of Fact Affecting the Constitutional Validity of Legislative Action, 38 Harvard Law Review 6, 7

See also, The Consideration of Facts in "Due Process" Cases, 30 Columbia Law Review 360 (comment). We feel, however, that this criticism cannot reach the instant case. The matter here can hardly be reduced to statistics. It is rather one of logical conjecture and comparison with the pattern of decided cases, based, furthermore, upon the learned trial judge's special finding of the fact of unreasonableness.

ORDER AFFIRMING DECREE.

(Filed November 10, 1939.)

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE THIRD CIRCUIT.

No. 6862. October Term, 1938.

Minersville School District, Board of Education of Minersville School District, etc.,
Defendants-Appellants,

v.

Walter Gobitis, Individually, and Lillian Gobitis and William Gobitis, Minors, by Walter Gobitis, Their Next Friend,
Plaintiffs-Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Eastern District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby affirmed, with costs.

Philadelphia,
November 10, 1939.

WILLIAM CLARK,
Circuit Judge.

(Endorsements: Order Affirming Decree. Received and Filed November 10, 1939, Wm. P. Rowland, Clerk.)

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNSYLVANIA, } *Sct.*
THIRD JUDICIAL CIRCUIT,

I, WILLIAM P. ROWLAND, Clerk of the United States Circuit Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original Transcript of Record and Proceedings in this Court in the case of Minersville School District, Board of Education of Minersville School District, etc., Defendants-Appellants, v. Walter Gobitis, Individually, and Lillian Gobitis and William Gobitis, Minors, by Walter Gobitis, Their Next Friend, Plaintiffs-Appellees, No. 6862, on file, and now remaining among the records of the said court, in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this twenty-first
(Seal) day of November, in the year of our Lord one thousand nine hundred and thirty-nine and of the Independence of the United States the one hundred and sixty-fourth.

WM. P. ROWLAND,
Clerk of the United States Circuit Court of Appeals, Third Circuit.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 4, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.